APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1968

No. 61

NATIONAL LABOR RELATIONS BOARD,
Petitioner

—v.—

JOSEPH T. STRONG, d/b/a STRONG ROOFING AND INSULATING CO.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 17, 1968
CERTIORARI GRANTED MAY 27, 1968

Supreme Court of the United States

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

6. 3.64	Charge filed, G.C. exhibit 1(a)
8.19.64	Complaint and notice of hearing issued, G. C. Exhibit 1(c)
8.27.64	Respondent's answer to complaint dated, G. C. Exhibit 1(e)
1. 8.65	Trial Examiner's Decision issued
2. 9.65	Respondent's exceptions to Trial Examiner's Decision received
4.19.65	Board's Decision and Order issued

OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE
NATIONAL LABOR RELATIONS BOARD
TWENTY FIRST REGION

Docket No. 21-CA-5978

IN THE MATTER OF:

JOSEPH T. STRONG, d/b/a STRONG ROOFING & INSULATING CO., RESPONDENT

-and-

ROOFERS LOCAL 36, UNITED SLATE, TILE AND COMPOSITION ROOFERS, DAMP AND WATERPROOF WORKERS ASSOCIATION, CHARGING PARTY

Place: Los Angeles, California

Date: October 20, 1964

Pages: 1-95
VOLUME I

Oct. 27, 1964, San Francisco Branch, National Relations Board, Trial Examining Division

[1]

BEFORE THE
NATIONAL LABOR RELATIONS BOARD
TWENTY-FIRST REGION

Docket No. 21-CA-5978

JOSEPH T. STRONG, d/b/a STRONG ROOFING & INSULATING CO., RESPONDENT

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ROOFERS LOCAL 36, UNITED SLATE, TILE AND COMPOSITION ROOFERS, DAMP AND WATERPROOF WORKERS ASSOCIATION, CHARGING PARTY

Hearing Room 1,
Mezzanine Floor,
849 S. Broadway,
Los Angeles, Calif.,

Tuesday, October 20, 1964

The above-entitled matter came on for hearing, pursuant to notice, at 10:00 o'clock a.m.

BEFORE:

MARTIN S. BENNETT, Esq., Trial Examiner.

APPEARANCES:

HAROLD E. JAHN, Esq., 849 South Broadway, Los Angeles, California, appearing on behalf of the counsel for the General Counsel.

O'MELVENY & MYERS, BY:

ALFRED C. PHILLIPS, Esq., 433 South Spring Street, Los Angeles 13, Calif., appearing on behalf of the Respondent.

[2]

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EXHIBITS

[3] PROCEEDINGS

TRIAL EXAMINER BENNETT: The hearing will be in order.

This is a formal hearing before the National Labor Relations Board in the matter of Strong Roofing and Insulating Co., Case No. 21-CA-5978.

The Trial Examiner conducting the hearing is Martin S. Bennett.

I will ask counsel to state their appearances.

For the General Counsel?

MR. JAHN: Harold E. Jahn, for the General Counsel, care of the National Labor Relations Board, 849 South Broadway, Los Angeles, California.

Mr. Examiner, I would like to state that I have been informed by Mr. Eugene Miller, attorney for Roofers. Local 36, that he will not make an appearance.

However, he has requested all papers be served on him, and that is Mr. Eugene Miller of Brundage, Hackler and Roseman, 1621 West Ninth Street, Los Angeles.

TRIAL EXAMINER: For the respondent?

MR. PHILLIPS: O'Melveny and Myers, by Alfred C. Phillips, 433 South Spring Street, Los Angeles 13.

* * * *

[10] DAVID VAN EYK

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Jahn) Mr. Van Eyk, would you please state your name and address for the record?

A David Van Eyk.

You want my home address or business?

Q Home address.

A 4535 Deelane Street in Torrance.

TRIAL EXAMINER: Is that E-w?

THE WITNESS: E-y-k, sir.

Q (By Mr. Jahn) By whom are you employed, Mr. Van Eyk?

A By the Roofing Contractors' Association of Southern [11] California.

Q And in what capacity are you employed by that Association?

A Executive director.

Q And what is the address of the Association?

A 1833 West 8th Street, L. A. 17.

Q Now, as the executive director, are you involved in the day-to-day affairs of the Association?

A Oh, yes.

Q Is the Association incorporated?

A Yes.

Q Does the Association have by-laws?

A Yes.

TRIAL EXAMINER: Show you the name of the Association in Paragraph 1(b) of the complaint, is that the correct name?

THE WITNESS: Yes. Yes, it is.

MR. JAHN: Mr. Examiner, I ask the reporter to mark this document as General Counsel's Exhibit 2 for identification as a document entitled, "The Revised By-laws of the Roofing Contractors' Association of Southern California, Incorporated, January, 1963."

(The document above referred to was marked General Counsel's Exhibit No. 2 for identification.)

MR. JAHN: Let the record show that I am now handing the witness a copy of General Counsel's Exhibit No. 2.

[12] Q (By Mr. Jahn) Mr. Van Eyk, would you take a look at that, please?

A Yes, these are our by laws.

Q Are those by-laws currently in effect?

A Yes, they are. Hm-hum (affirmative).

Q Have those by-laws been in effect at all times since January of 1963?

A Yes, they have.

MR. JAHN: Mr. Examiner, I offer General Counsel's 2 in evidence.

TRIAL EXAMINER: Any objection?

MR. PHILLIPS: No objection.

TRIAL EXAMINER: I will receive it.

(The document above referred to, heretofore marked General Counsel's Exhibit No. 2, was received in evidence.)

Q (By Mr. Jahn) Mr. Van Eyk, does the Roofing Contractors Association have regular members?

A Yes.

Q Was Strong Roofing and Insulating Company a regular member of the Asscciation in August of 1963?

A Yes.

TRIAL EXAMINER: What do you mean by the term "regular member"?

THE WITNESS: If I may, I will elaborate.

TRIAL EXAMINER: Would you?

[13] THE WITNESS: Regular members, as we term them, are accredited union roofing contractor members. We also have an associate contractor membership category which are non-union members. This went into effect in June of '62. We also have a category of associate members which comprise the manufacturers, suppliers, wholesalers, et cetera.

TRIAL EXAMINER: How many in each category, approximately?

THE WITNESS: Well, at the present time we have approximately 85 regular members, 10 of the associate contractor members, and about 35 of the associate members.

TRIAL EXAMINER: Next question.

Q (By Mr. Jahn) Mr. Van Eyk, had Strong Roofing and Insulating Company been a regular member of the Association for some time prior to August of 1963?

A Yes, they had.

Q As a regular member of the Association, did Strong Roofing and Insulating Company pay a monthly membership fee?

A Yes, he did.

Q Does the Association maintain a record showing the monthly membership fees paid by its members?

A Yes.

Q Was such a membership record maintained for Strong Roofing and Insulating Company?

A Yes.

MR. JAHN: Mr. Examiner, I ask the reporter to mark this [14] document as General Counsel's Exhibit 3 for identification.

(The document above referred to was marked General Counsel's Exhibit No. 3 for identification.)

MR. JAHN: Let the record show that I am giving the witness a copy of General Counsel's Exhibit No. 3.

THE WITNESS: Yes, this is the most recent record.

Q (By Mr. Jahn) Mr. Van Eyk, is that a record of the membership dues paid by Strong Roofing Company?

A Yes, it is.

TRIAL EXAMINER: This covers what period of time?

THE WITNESS: This covers—beginning April 24, 1962, April dues, through April of 1964. There is a more current card in this file right now. This is used in conjunction with an NCR bookkeeping machine.

TRIAL EXAMINER: This would be the most recent form of its type?

THE WITNESS: Right.

TRIAL EXAMINER: And the figure in the upper right-hand corner is the monthly dues?

THE WITNESS: This is the monthly dues, yes, sir.

TRIAL EXAMINER: I notice that the other side has a different figure.

THE WITNESS: This is true. In the fall of 1963, they requested a change in their membership status. They were bonded through us. They had a bond deposit. They requested [15] a refund of this bond and, also, a change-over from a regular member status to an associate contractor member status, and that is why there is a difference.

TRIAL EXAMINER: I was referring specifically to the—so the record may be clear—to the figure of $17.25 and $15.00.

Are you offering this?

MR. JAHN: Yes. I offer that document into evidence.

MR. PHILLIPS: No objection.
TRIAL EXAMINER: I will receive it.

(The document above referred to, heretofore marked General Counsel's Exhibit No. 3, was received in evidence.)

* * * * *

Q (By Mr. Jahn) Mr. Van Eyk, is the Roofing Contractors' Association party to a labor agreement at this time?

A Yes, we are.

Q And what union or unions is that agreement with?

A With Local 36 and 72 of the Hot Roofers Union.

[16] Q On what date did the present agreement become effective?

A August 15, 1963.

MR. JAHN: Mr. Examiner, I ask the reporter to mark this document as General Counsel's Exhibit 4 for identification.

(The document above referred to was marked General Counsel's Exhibit 4 for identification.)

MR. JAHN: Let the record show that I am now showing Mr. Van Eyk a copy of General Counsel's No. 4.

THE WITNESS: Uh-huh.

Q (By Mr. Jahn) Mr. Van Eyk, is that the current agreement between the unions and the Association?

A This is the current master labor agreement, yes.

MR. JAHN: Mr. Examiner, I offer General Counsel's 4 into evidence.

MR. PHILLIPS: No objection.

TRIAL EXAMINER: I will receive it.

(The document above referred to, heretofore marked General Counsel's Exhibit No. 4, was received in evidence.)

Q (By Mr. Jahn) Mr. Van Eyk, when did the negotiations for the 1963 agreement, General Counsel's Exhibit 4, begin?

A Approximately March of 1963.

Q And how long did those negotiations continue?

A Right up through the 14th of August.

Q Now, during that time that the negotiations were taking [17] place, did the Association ever notify its members of the status of the negotiations?

A Yes, sir.

MR. PHILLIPS: I would like to enter an objection. There is no foundation as to what Mr. Van Eyk's role was in the negotiations. Did he participate in the negotiations?

TRIAL EXAMINER: Why don't we find out about that?

Q (By Mr. Jahn) Mr. Van Eyk, did you participate in the negotiations for the 1963 contract?

A For the most part, yes, sir.

Q During those negotiations, did the Association notify its members of the status of the negotiations?

A Yes, sir, we did.

Q And could you tell us what dates—or what type of notification was given?

A Well, I can't reflect every particular one. However, there were two open meetings to which all accredited roofing contractors were invited for the purpose of discussing the negotiations. One was on the 21st of May and the other one was approximately the 13th of July—in the middle of the month of July.

TRIAL EXAMINER: And by the term "accredited roofing contractors", you mean whom?

THE WITNESS: We encompass the—I know—the three county area of accredited roofing contractors which included [18] our own regular membership.

Q (By Mr. Jahn) At any time during the negotiations, did the Association submit copies of the provisions that had been agreed upon up to that point to the members?

A Yes.

On July 27th, the Association again mailed to each accredited union roofing contractor in those three counties a mimeographed copy of the negotiations to date—those issues which had been agreed upon up to that point.

TRIAL EXAMINER: Could you tell me: Do you or do you not have authorization from all of your members for collective bargaining?

THE WITNESS: All regular members, when they belong to this Association, automatically give us their bargaining rights for the labor contract.

TRIAL EXAMINER: That was true at the time for your regular members?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: One other thing. You said that Strong Roofing had been a member of the Association for some years.

Could you give me a better idea of the period of time you are referring to?

THE WITNESS: Well—

TRIAL EXAMINER: Approximately.

THE WITNESS: The last membership application we have on file—in these files was dated November 19, 1960. [19] However, Mr. Strong had been our Association president some years prior to that.

TRIAL EXAMINER: So the membership of this firm antedated 1960; is that what you are saying?

THE WITNESS: Well, the most recent application I have—I would assume without going back through all of the records—I would assume that perhaps at one time he either dropped out and then was reinstated or the Association produced a new application form which they requested each one to fill out.

TRIAL EXAMINER: But in any event, this firm has been a regular member since 1960?

THE WITNESS: Yes, I believe so.

Q (By Mr. Jahn) Were the notices that you referred to earlier sent to or given to the Strong Roofing Company?

A They were sent to everyone on the accredited list including Strong.

Q Mr. Van Eyk, does the Association permit its members to bargain with the union on their own behalf?

A No, sir.

Q Are all members required to accept the contract negotiated by the Association?

A Yes, sir.

Q Did Strong Roofing at any time prior to—at any time during or prior to August, 1963, request to with-

draw its membership from the Roofing Contractors' Association?

[20] A Not to my knowledge.

MR. JAHN: I have no further questions, Mr. Examiner.

TRIAL EXAMINER: This request about the change in monthly dues, when was that made?

THE WITNESS: In the fall. The records will show it.

May I see that again, please?

MR. JAHN: Let the record show that the witness is looking at General Counsel's Exhibit No. 8.

THE WITNESS: We adjusted the dues in December, which encompassed November, December, October, so the effect—October 1st, the dues structure was changed or in effect was changed from a regular member to an associate contractor member.

TRIAL EXAMINER: But the request was made to December retroactively in October; is that what you are saying?

THE WITNESS: The request was verbal—by phone—I can't answer that in detail. I don't know exactly when it happened. I would assume it would be somewhere in there because the adjustment was made in December and it went back for three months.

TRIAL EXAMINER: You are assuming the request was made in December but it could have been as early as October?

THE WITNESS: It could have been in October or even last September. I should explain that.

Prior to January first of '64, I was the assistant executive director to my predecessor and so I didn't get [21] involved in each and every detail as deeply as I do now.

MR. JAHN: I have no further questions, Mr. Examiner.

CROSS EXAMINATION

Q (By Mr. Phillips) What was your position on the Joint Labor Relations—what is your position now on the Joint Labor Relations Board?

A I am a representative of the Association.

Q Could you explain what the Joint Labor Relations Board is?

A The Joint Labor Relations Board?

Q Yes.

A Yes, sir.

It is a part of the master labor agreement. It—it is set up as a—you might term "a grievance committee" to hear problems of a contractor or a union man who violates this particular—any portion of this particular agreement.

Q Well, is it fair to say that the general function of this committee is to administer this agreement during the term of the agreement?

A In a broad sense, yes.

Q It takes up problems that arise with respect to the agreement?

A This is right. As far as interpretation of contractual language, as well as hearing cases wherein a contractor or a union man has violated some portion of the agreement.

[22] Q Now, in August of 1963, what was your position with the Joint Labor Relations Board?

A I was assistant to the executive director at that time.

Q You were not a member of the Joint Labor Relations Board?

A No, neither was he. I am not a member of the Joint Labor Relations Board today. I am only there as a representative of the Association. The members of the Board per se, must be contractors and union or an equal amount of both.

Q Would you be aware of any correspondence directed to the Joint Labor Relations Board advising the Joint Labor Relations Board of intent to withdraw from the bargaining—well, from the bargaining unit?

A I'd have to go through the records. I sat in on the meetings of the Joint Labor Reations Board, but if you ask me to remember each detail I cannot.

Q To your knowledge, did the Joint Labor Relations Board receive a letter from Mr. Strong dated August 20, 1963?

A I believe they did.

Q Does the current agreement require a bond—

A Yes, sir.

Q —by the contractor?

What is the purpose of this bond?

A The purpose of the bond is to guarantee wages and fringe benefits.

[23] Q Now, did Mr. Strong, to your knowledge, request that the bond be—notify the Joint Labor Relations Board that he wanted to withdraw from the agreement and request the bond be returned to him?

A Yes, this was contained in that letter, as I recall.

Q Now, did the Joint Labor Relations Board comply with this request?

A As I read the minutes of that particular meeting, it was turned over to Mr. Baier who was then executive director of the Association, for him to handle inasmuch as Strong had their bond with the Association.

Q Do you know whether or not the Association did return the bond to Mr. Strong?

A Yes, we did refund his bond to him.

Q At what time?

A His bond was cancelled on the 30th of September and it was refunded on the 3rd of January—the 30th of September, 1963, and the 3rd of January of January, 1964.

TRIAL EXAMINER: That was a cash bond he had on deposit?

THE WITNESS: He had a $400 cash deposit with the Association for which we, in turn, bonded him for $1,000, yes.

Q (By Mr. Phillips) And was this matter, to your knowledge, discussed at the Joint Labor Relations Board meetings?

A I don't recall it ever being brought up again at the Joint Labor Relations Board, no.

[24] Q Was it initially on the receipt of Mr. Strong's letter of August 20, 1963? Was it discussed at that time?

A (No response.)

Q Were you at the Joint Labor Relations Board meetings about that time?

A Yes, I was attending those meetings, yes.

Q Was this request discussed at those meetings?

A As I say, the letter from Mr. Strong was read at that particular meeting and it was—according to the minutes—given over to Mr. Baier of the Association to handle from there.

Q Now, what is the status of an associate member?

A An associate member? An associate member is a manufacturer, wholesaler, or supplier of roofing products.

Q I am sorry, I will—

A An associate contractor member is what—we have that category for the non-union contractor members.

Q Could you identify this document for me?

A Yes, sir. This is our current list of the associate contractor members.

Q And does that show Mr. Strong as a non-union associate member?

A Yes, it does.

MR. PHILLIPS: I do not believe it is necessary to offer this in evidence.

On second thought, I think I will offer this in evidence.

[25] TRIAL EXAMINER: All right.

Any objection?

MR. JAHN: I have no objection.

TRIAL EXAMINER: It may be marked and received as Respondent's No. 1.

(The document above referred to was marked Respondent's Exhibit No. 1 for identification and was received in evidence.)

TRIAL EXAMINER: An associate member who is non-union does not have a bond?

THE WITNESS: That is correct.

Q (By Mr. Phillips) An associate member is not covered by the contract, is that correct?

A That is correct.

Q Now—
A An associate contractor member.
Q An associate contractor member, yes, I am sorry.
TRIAL EXAMINER: So the record will be clear, we are talking only about associate contractors and not—but not about the other associate contractor category.
Q (By Mr. Phillips) That is somebody outside that is a manufacturer or something?
A Right.
Q Now, you testified on direct examination with respect to the fact that all your regular members automatically gave you bargaining rights.
[26] What is that based on?
A Well, it is—first of all, it is part of the application—membership application which they sign. When they—when they sign the membership application to become members they agree to abide by the by-laws of the organization, and the by-laws specifically state that the powers for negotiating a master labor agreement are invested in the labor committee.
TRIAL EXAMINER: Which article of the by-laws?
THE WITNESS: It would be 9, sir.

• • • •

[28]Q (By Mr. Phillips) Do you know whether or not the Association—don't answer this if you don't know—had a practice in 1963, and in the prior years in which contract negotiations were being held, of sending around a proxy or authorization statement to all members of the Association to sign?
A Not to the members of the Association, but to the non-members.
Q Well—
A In other words, all accredited roofing contractors who were not members of the Association. We have—at least during these last negotiations—requested a proxy.
Q Well, do you know whether or not these had been sent around to the regular members also?
A They had been sent to the regular members also just for their edification.

MR. PHILLIPS: Well, I move to strike the gist of the "edification." That is not responsive.

TRIAL EXAMINER: Mr. Jahn?

MR. JAHN: Well, I think the witness is testifying as to his knowledge of the situation and I think it should stand.

TRIAL EXAMINER: I will permit the answer to stand.

[29] Would you explain that reference to "edification"?

THE WITNESS: Yes, sir.

We try to keep our membership informed of everything we are doing within the Association in every category, and, therefore, copies of almost everything we do goes out in one form or another recaped into a bulletin form or in the manner that I speak of.

TRIAL EXAMINER: You say you sent them as proxies.

Do I infer there was no requirement that the proxies be mailed back?

THE WITNESS: There was no requirement on the part of the regular members to mail these back.

TRIAL EXAMINER: Were they or were they not, in fact, mailed back?

THE WITNESS: Some of them did mail them back, yes, sir. We have some signatures from people who already are members on proxy forms.

Q (By Mr. Phillips) Well, isn't it true, over a period of many years, that the Association did send out these authorizations to regular members each year and these members did—including Strong Roofing Company—did execute these authorizations each time?

A I cannot answer that. I don't honestly know.

Q Do you have in your files authorizations from Strong Roofing Company from prior years?

[30] A Not in this recent file. The only thing—you have the—

Q I have this application which I will return to you. Did you receive a subpoena duces tecum yesterday?

A Yes, sir.

Q Did that have on there a request for the authorizations?

A Yes, it did.

However, the files in the office are limited. We have a great deal of the files in storage.

Q Those authorizations were not available in the office?

A That is right.

TRIAL EXAMINER: You have brought everything that exists in the office?

THE WITNESS: Right.

Q (By Mr. Phillips) I think you have testified that Mr. Strong was accepted as an associate member of the Association in January, 1954, and has remained—

A In December of 1963. That is—at least that is when the records were changed for the dues.

Q Right, and has remained so up until September of 1964?

A Yes, sir.

Q What do the records now show?

A He has since cancelled his membership. We received a note from Mr. Strong, I believe, the end of August or possibly early September. I don't have that record either. It wasn't a registered letter. I wrote him on September 17, [31] 1964.

* * * *

[34] H. P. BENNETT

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Jahn) Will you please state your name and address for the record, Mr. Bennett.

A My name is H. P. Bennett. My home address is 120, Apartment 15. That is a motel on Long Beach Boulevard.

My business address is 9700 South Main Street and, also, my mailing address.

Q Mr. Bennett, by whom are you employed?

A By Roofers Local 36.

Q And in what capacity are you employed by Local 36?

A Business representative.

TRIAL EXAMINER: I might state for the record that, at least as far as I know, this Mr. Bennett and I are not related.

Q (By Mr. Jahn) And what is the business address of Local 36?

A 9700 South Main Street, Los Angeles 3.

[35] Q Does Local 36 admit employees to membership?

A Yes, sir.

Q Do employee members of Local 36 elect officers of the organization?

A Yes, sir.

Q Does Local 36 deal with employers on terms and conditions of employment?

A Yes, sir.

Q Mr. Bennett, I will show you General Counsel's Exhibit No. 4 and ask you if you participated in the—or first, please take a look at that.

A Yes, sir.

Q Did you participate in the negotiations of that contract?

A Yes, sir.

Q And when were these negotiations completed?

A August 14th—completed, sir?

Q Yes.

A August 14th, 1963.

Q And when was the contract finally agreed upon?

A It was ratified on August 17th, 1963, by our membership.

Q Now, is General Counsel's 4 the first contract that Local 36 has had with the Roofing Contractors Association?

A Will you repeat that?

TRIAL EXAMINER: The reporter will read it back.

(Record read.)

THE WITNESS: No, sir.

[36] Q (By Mr. Jahn) For how long has local 36 been recognized by the Association?

A To my own personal knowledge, since 1953, when I transferred into the Local.

Q Has it been the practice of the union to have the individual contractor members of the Association sign the contract?

A Yes, sir.

Q And would you explain how this—what procedure was followed?

A By application which was for the information of the files, so that the contractor would fill out his address, telephone number, shop address, any changes, and an opportunity to name the working member of the firm, and so forth and so on.

TRIAL EXAMINER: What would the actual procedure be after the Association-wide contract was negotiated? Who would take the initiative on that?

THE WITNESS: The union would go to each and every contractor, explaining any questions that they might want to have, have him fill out the application and sign the agreement.

TRIAL EXAMINER: This would be the agreement—the Association agreement—the copy of the—

THE WITNESS: The master labor agreement.

TRIAL EXAMINER: You go to the individual with a copy [37] of the master agreement and ask him to sign it?

THE WITNESS: With a—along with an application, a new bond form and, in this case here, there was a new bond form. It was a new bond form that we apprised each contractor of.

TRIAL EXAMINER: And this would be a bond made out to whom?

THE WITNESS: To the Joint Labor Relations Board.

Q (By Mr. Jahn) Mr. Bennett, how long has this practice been followed by the union?

A To my knowledge, since 1954, when I—the first time I served on the negotiating committee.

Q Has Strong Roofing signed previous contracts which were negotiated by Local 36 and the Association?

A Yes, sir.

Q Was Strong Roofing requested to sign the current agreement, General Counsel's No. 4?

A Yes, sir.

Q When were they requested to sign that agreement?

A In the fall of—in the late fall of 1963.

Q Could you tell me where and by whom?

A To my knowledge—I can't tell you where. I assume that it was at his office by one of my assistant agents, Phil Sheridan.

MR. JAHN: Mr. Examiner, I ask the reporter to mark [38] these documents as General Counsel's Exhibits 5(a) and (b).

(The documents above referred to were marked General Counsel's Exhibits Nos. 5(a) and 5(b) for identification.)

MR. JAHN: These documents are entitled "Monthly Transmittal, Union Roofers' Trust Account."

Let the record show that I am presenting these documents to Mr. Bennett for his review.

Q (By Mr. Jahn) Would you look at those, Mr. Bennett?

Can you identify these documents, Mr. Bennett?

A Yes, sir.

These are transmittal forms for the fringe benefits set forth in the master labor agreement.

Q Who compiles these records—who prepares these forms?

A The contractor.

Q The contractor prepares them and does he submit them to your office?

A No, sir.

Q He submits them to the union?

A To the union trust account.

Q I see.

Are these records then kept in the normal course of your business?

A These are kept in the union roofers' trust account as trustees' records.

MR. PHILLIPS: Well, I see no one here who has kept

[39] these records and I am going to—I am not going to object.

Q (By Mr. Jahn) Does your Local receive copies of those transmittal forms?

A Yes, sir, we do.

Q O.K.

Do you recognize the signature which appears at the bottom of each of those forms, Mr. Bennett?

A I believe this signature is Mrs. Strong's.

MR. PHILLIPS: I object to that for foundation.

TRIAL EXAMINER: It seems to—

MR. PHILLIPS: We will stipulate that she signed them.

TRIAL EXAMINER: Both signed by Mrs. Strong; is that agreeable?

MR. JAHN: That is agreeable to me.

TRIAL EXAMINER: So stipulated.

* * * *

[50] WILLIAM D. NUTTALL

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Jahn) Would you please state your name and address?

A William D. Nuttall, 1536 East 82nd Street, Los Angeles, 1.

TRIAL EXAMINER: Spell your last name for the record.

[51] THE WITNESS: N-u-t-t-a-l-l.

Q (By Mr. Jahn) And by whom are you employed, Mr. Nuttall?

A Roofers Local 36.

Q In what capacity are you employed?

A Assistant representative.

Q Mr. Nuttall, I show you a copy of General Counsel's No. 4 and ask you if you have ever discussed that contract with Mr. Strong.

A Well, not exactly the contract, but I did contact Mr. Strong as to signing the contract, yes.

Q When did you ask Mr. Strong to sign the contract?

A Oh, it was in the month of April.

Q And where did this conversation take place?

MR. PHILLIPS: What year?

THE WITNESS: 1964.

TRIAL EXAMINER: That was your first contact—

THE WITNESS: That was my first contact with Mr. Strong.

Q (By Mr. Jahn) And where did this conversation take place?

A In Strong's—Mr. Strong's office.

Q And who did you talk to at that time?

A Mr. Strong.

Q And was there anyone else present?

A No, there wasn't.

Q And what was said at that time, to the best of your [52] recollection?

A I asked Mr. Strong about signing the contract and he said that they—thinking things over, it did not seem that it would be feasible for him to sign the contract and we talked about why it should not be feasible.

Q What exactly did you talk about—what did you say?

A Well, he showed me in the telephone book the number of the contractors that were non-union—that he felt it was hurting his business—and that he would rather go non-union rather than sign it—sign up with the locals. We just—

TRIAL EXAMINER: Are you talking specifically about signing this contract which is in evidence, G.C.'s 4?

THE WITNESS: That is right.

* * * * *

[58] JOSEPH T. STRONG

the witness on the stand at the time of recess, resumed the stand and testified as follows:

TRIAL EXAMINER: You are already sworn, Mr. Strong.

DIRECT EXAMINATION

Q (By Mr. Phillips) What is your name and address?
A Joseph T. Strong, 400 East Live Oak Avenue, San Gabriel.
Q What is your business, Mr. Strong?
A I am in the roofing and insulating contracting business.
Q What position do you hold in that business?
A I own the business.
Q You own the Strong Roofing and Insulating Company?
A Yes, sir, that is right.
Q How long have you been in the roofing business?
A Since 1932.
Q Have you confined your operations primarily to one geographical area?
A Yes, I have.
Q And have you confined your operations primarily to one particular type of job?
[59] A Yes.
Q What type of job is that?
A Composition roofing and some tile roofing—mostly composition roofing.
Q On residences or commercial—
A Residences and some commercial.
Q Has it been primarily residential jobs?
A Yes, sir.

• • • •

[66] Q (By Mr. Phillips) Did you seek to withdraw from the—well, to terminate the agreement and to withdraw from the multi-employer unit at a later date?
A I did.
Q When was that?
A On the 22nd or 21st day of August, 1963.
Q And how did you do that?
A I mailed a letter to—this time registered—to the Joint Labor Relations Board of Local 36.
Q Is this a copy of that letter?
A It is.
Q This was a registered letter?

A Yes.

MR. PHILLIPS: I would like to offer this into evidence as Respondent's No. 8.

TRIAL EXAMINER: Any objection to this?

MR. JAHN: No objection, Mr. Examiner.

TRIAL EXAMINER: I will receive it.

(The document above referred to was marked Respondent's Exhibit No. 8 and was received in evidence.)

Q (By Mr. Phillips) Will you please explain to the Trial Examiner what you intended to do in writing this letter and [67] why you used this particular language.

MR. JAHN: Mr. Examiner, I object to that. Wouldn't the letter speak for itself in this case?

TRIAL EXAMINER: Well, it speaks for itself. However, I will permit you to ask him why he used certain language.

MR. PHILLIPS: Thank you.

THE WITNESS: May I see it so I can refresh myself?

TRIAL EXAMINER: Or if he had any reason for using particular language.

MR. PHILLIPS: Right.

THE WITNESS: The language which I thought was correct was in—that I referred to the article—to "that article in the master agreement dated August 15, 1963, to and including August 15, 1967, pertaining to the termination of the master contract."

I was under the impression that that article—assuming it was similar to the previous master agreement which had expired—indicated that I was able to terminate my connections with the union.

Q (By Mr. Phillips) Well, let me show you Article X of that agreement.

Is that the article you are referring to?

A I did not have this book at that time. I had the other, old book.

Q But it was a termination article?

[68] A It was a termination article, yes. I don't know the number of the article.

Q What was your understanding of what that termination article provided?

A That if the parties involved gave each other a 60-day notice that they could terminate any time within the —in this case, within 60 days of ther termination of the contract which is on August 15, 1967. That was my interpretation of it.

Q Well, it says—

A I did it in good faith.

Q It says, "Not less than 60 days."

Did you interpret that to mean you could do this right after the start of the contract?

A In reading it and in interpreting that section, I thought it meant that any time prior to 60 days—prior to 60 days of the termination of the contract, that I could write this letter and be terminated, yes.

TRIAL EXAMINER: This was—you are talking about the 1963 to 1967 contract in this letter?

THE WITNESS: At that time I didn't have that one in front of me. I did not know which article it was, but I am talking about whatever article pertains to the termination in the agreement.

Q (By Mr. Phillips) How did you know that agreement was [69] in effect—the 1963 to 1967 agreement?

A I had been receiving bulletins from the Roofing Contractors Association.

Q Now, did you continue to comply with the agreement for 60 days after that letter?

A Yes.

Q Did you receive any reply from the Joint Labor Relations Board, or the union, or the Association during the next 60 days?

A I did not.

Q What action did you take at the end of the 60 days?

A At the end of 60 days we operated as a—not having received any communications one way or the other, we assumed—we ran short on work, so consequently there were no union roofers left on the payrolls at that time. We operated as—from there on in—as a non-union operating company.

TRIAL EXAMINER: If I follow you correctly—and tell me if I am in error—you were under the impression that you could give a 60-day notice as of August 20, 1963?

THE WITNESS: I am in error as to the date I wrote it. I should have made it earlier. I realize—

TRIAL EXAMINER: But you did write this—

THE WITNESS: I did.

TRIAL EXAMINER: If I follow your position correctly, it is that as of the time you wrote this August 20th letter, [70] you believed you could give a 60-day notice and terminate the contract, is that correct?

THE WITNESS: According to my reading, I interpreted you could do it any time before the termination of the contract which is in 1967.

TRIAL EXAMINER: A 60-day notice as of August 20 would terminate the contract?

THE WITNESS: That is right.

I had that experience—

TRIAL EXAMINER: No, no. You answered my question.

THE WITNESS: All right.

Q (By Mr. Phillips) Now, referring to Respondent's Exhibit 3, I notice in the second paragraph thereof you refer to the deposit for the bond and requested the return of the bond deposit.

Was this bond deposit, in fact, returned to you?

A Yes, it was returned.

Q When?

A In January, 1964.

* * * *

[72] Q Now, did you personally receive any—yourself—receive any communications from the union at all after August 1963?

A I did in April of 1964.

Q Could you explain the circumstances of that communication, telling who communicated with you?

A Mr. Nuttal came to my office on April 24, 1964, and asked [73] me to sign the master agreement currently in effect. I said, "No," that I could not do it for economic reasons. He asked me again if I would sign it, and I said I could not. He mentioned that he was apt to pull the men

that I was using on the United States Rubber job—or picket the job, rather. He would picket the job if I didn't sign it—that contract which is the current master labor agreement.

Q Well, did he state at any time that you were bound by that agreement?

A No, he did not.

Q How did this meeting with Nuttal come about? Did you receive any prior telephone calls?

A Yes, Mr. Nuttal called me the day before asking for an appointment.

* * * *

[78] TRIAL EXAMINER: I would like to ask you a question.

Now, we have in evidence these payments that were made on September 24th and October 15th, 1963, by Mrs. Strong.

Were you familiar with the fact that those payments were made?

A Yes, sir.

* * * *

[81] Q (By Mr. Jahn) Did you give an affidavit to the Board, Mr. Strong?

A Pardon?

Q Did you give an affidavit to the Board on this case as to the facts of this case?

A I did.

Q Did you swear at the time you gave that affidavit that it was true?

A To the best of my knowledge, if you'll read it.

MR. PHILLIPS: I am going to put on evidence with respect to other communications with Mrs. Strong.

[82] MR. JAHN: Mr. Examiner, I request that the reporter mark this document as General Counsel's Exhibit No. 6.

(The document above referred to was marked General Counsel's Exhibit No. 6 for identification.)

Q (By Mr. Jahn) Mr. Strong, I show you General Counsel's Exhibit No. 6 and ask you if this is your signature that appears on the last page—on page 8 of that?

A Yes, sir.

Q And are these your initials that appear on each sheet—

A Yes, sir.

Q —each of the preceding sheets?

A That is true.

Q O.K.

Would you please read here beginning on page 2—at the bottom of page 2—and I ask you to read that aloud.

A "In late October, 1963, after I had submitted the above letter to the Joint Board, a Mr. Bennett, an agent of Local 36, came into my office and spoke to my wife. I was not present at the time.

"Bennett presented my wife with a copy of the union contract which became effective August 15th, 1963, and asked her to sign it.

MR. PHILLIPS: I don't see the relevance of his reading this section.

MR. JAHN: It is relevant in that it is the only way it [83] is going to make sense to the later section of this paragraph.

TRIAL EXAMINER: Go ahead.

THE WITNESS: "She informed Bennett that we had requested to withdraw from the Association and we had received no response. She told him she would consult with me that evening and call him the following day."

TRIAL EXAMINER: I assume that what you just stated is based upon what your wife reported to you?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: Next question.

Q (By Mr. Jahn) Now, proceeding to page 4. Would you read this paragraph starting with, "The next . . ."

A "The next thing that I recall happening is that another agent of Local 36, a Mr. Nuttal, came to my office and again asked me to sign the contract. This occurred in December, 1963.

"I refused to sign the agreement. I told Nuttal the same thing I had told Bennett."

Q Do you recall that incident now, Mr. Strong?

A I recall that—it is a bit in error in that Mrs. Strong at that time was also there instead of myself. I'd like to correct it, if you don't mind.

Q But the date is correct?

A He didn't in December—I don't recall that—the date in December is on there, but he did call in December —[84] but he didn't—I was not—

MR. PHILLIPS: You were not there?

THE WITNESS: I did not see the gentleman there.

TRIAL EXAMINER: In December, he saw Mrs. Strong and she so reported to you?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: By the way, what is Mrs. Strong's connection with the business?

THE WITNESS: She is my wife and she has been managing the office ever since we were married until 1958, when she took a leave until 1962, and she has been at it since that time.

TRIAL EXAMINER: She manages the office for you?

THE WITNESS: Yes, sir.

MR. JAHN: Mr. Trial Examiner, as a point of clarification, I believe the record shows that when he read the affidavit he—it indicated the union agent contacted his wife in August and contacted Mr. Strong in December of 1963.

TRIAL EXAMINER: In any event, he now states that the December contact was to Mrs. Strong.

Is that correct?

THE WITNESS: It is, sir.

Q (By Mr. Jahn) Did he also—did the union agent also contact Mrs. Strong in August?

A October.

[85] Q Or October, I am sorry.

A Yes, sir.

Q So he contacted her on two different occasions?

A Yes, sir.

Q Each time asking her to sign the contract?

MR. PHILLIPS: I think—

TRIAL EXAMINER: That has been asked and answered already.

MR. PHILLIPS: Mrs. Strong is going to testify.

* * * *

[87] MR. JAHN: Mr. Examiner, can I offer this affidavit into evidence—Mr. Strong's affidavit into evidence?

MR. PHILLIPS: I object to it.

TRIAL EXAMINER: You are offering that portion that he read?

MR. JAHN: Yes.

MR. PHILLIPS: It is in the record. He read it in the record.

TRIAL EXAMINER: As a practical matter, if the record already indicates what it contains there is nothing to be gained by having the affidavit physically in. However, I will consider the extract in the record as though the affidavit were in evidence.

I gather that is all, Mr. Jahn?

MR. JAHN: Yes, I have nothing.

MR. PHILLIPS: I would like to call Mrs. Strong.

Whereupon,

MRS. JOSEPH T. STRONG

was called as a witness by and one behalf of the respondent and, having been first duly sworn, was examined and testified as follows:

[88] DIRECT EXAMINATION

Q (By Mr. Phillips) What is your position with Strong Roofing Company?

A I am the wife of the owner.

Q And how long have you held that position? How long have you been connected with the firm?

A Thirty years.

Q Do you handle all the purchasing and so forth?

A I do.

Q Could you state whether or not the extent of the total purchases from any source of suppliers and other materials used in connection with the Strong Roofing Company business during the last fiscal year exceeded $50,000?

A No, sir.

Q It did not so exceed?

A No, it did not exceed.

Q Now, I would like to show you General Counsel's Exhibit 5(a). This is a trust account. Did you prepare that trust account and send it in to your trustees?

A I did.

Q Have you, subsequently to that, prepared any further trust accounts?

A I have.

Q I mean after that date?

A No.

Q Is that the last one that you sent in?

[89] A That's right.

* * * *

[90] Q (By Mr. Phillips) Now, Mrs. Strong, do you recall whether a representative of Local 36 came to your office in the fall of 1962?

A Yes, sir.

Q Do you recall the date?

A I couldn't recall the date exactly, except I can say it was probably around the 18th to the 20th of October.

Q Who was the union representative?

A Mr. Sheridan.

Q And would you please tell the Trial Examiner, as closely as you can remember, exactly what happened in that conversation—what was said.

A He came in the office and he said that he had come for [91] us to sign the new master agreement, and I said, "I am sorry, Mr. Sheridan," that Mr. Strong had sent a letter in to the effect that he was not going to re-sign, and I asked him if he had not seen it or known of it, and he said, "No," he didn't, and he said, "How come?" And he said, "I hate to see you drop out," and I said, "We hate to drop out." And I said, well, I would talk to Mr. Strong that evening to see if, by any chance, he had reconsidered, and that I would either call him or he would call me—which he called me the following day, and I told him that I was sorry, Mr. Strong was remaining firm in his belief.

Q Did you receive any—did you have any further meetings with Mr. Sheridan?

A Yes.

On the morning of December the 10th I met with Mr. Sheridan in our office with our salesman.

Q How was that meeting arranged?

A I believe that Mr. Sheridan had talked to our superintendent.

MR. JAHN: Which year?

MR. PHILLIPS: December 10th—

Q (By Mr. Phillips) December 10th of what year?

A Of 1963.

MR. JAHN: And what was the October date?

Q (By Mr. Phillips) What was the October date?

[92] A I believe it was around the 18th to the 20th of 1963.

MR. PHILLIPS: I think that was in the record.

Q (By Mr. Phillips) Now, could you describe, as closely as you can remember, the convention that took place on December 10th between you and Mr. Sheridan?

A Yes.

Mr. Sheridan came in the office and he talked with—well, Mr. Smith, Sr., and Mr. Smith, Jr., and Mr. Moore and myself, and asked us to re-sign the agreement, and he said, "Mrs. Strong, if you don't sign it, I am going to have to pull your men—", "—my men." He said, "my men," and I said, "I am sorry, Mr. Sheridan, but at the present time I don't have any union men," that both Mr. Smiths had taken a withdrawal from the union and that Mr. Smith, Sr., was studying for a roofing contractor's license, and the two of them were going into business for themselves, which they have done.

* * * *

[93] Q (By Mr. Phillips) Did Mr. Sheridan, in either of these meetings, state that you were bound—you were required to sign that agreement?

A No, he did not. I simply said that I was sorry and that maybe at some future day—

Q Right. O.K.

* * * *

GENERAL COUNSEL'S EXHIBIT #2

BY-LAWS
ROOFING CONTRACTORS' ASSOCIATION OF SOUTHERN CALIFORNIA, INC.

ARTICLE I

NAME:

The name of this corporation shall be the "Roofing Contractors' Association of Southern California, Inc."

ARTICLE II

PURPOSE:

A. The purpose for which this corporation shall exist shall be to aid and assist its members and the Roofing Industry as a whole in matters relating to industrial, educational, social, community interests, labor relations, union contracts and other activities which may be determined by the Board of Directors to concern primarily members of this Association and the Industry in which they are engaged.

B. To reach a more complete understanding and a more uniform trade relationship between employer and employee and to promote the general welfare for the mutual interest and benefits of all concerned *within legal limits.*

C. That its objectives either as principal or as agent be such as authorized by law for non-profit corporations organized for purposes other than and not contemplating pecuniary profit and gain.

* * * *

ARTICLE IX

LABOR COMMITTEE:

The duties of the Labor Committee shall be to promote amity between the members and their employees; to act as a Committee to negotiate labor contracts with unions covering wages, hours, working conditions and any other

terms deemed necessary and proper. Each and every regular member shall recognize the Association, its counsel, and each of it duly selected labor committees as the member's exclusive bargaining representatives for negotiating, reaching, agreeing to abide by, and/or signing any and all collective bargaining agreements with labor unions. No member or members shall engage in any such conduct individually or collectively by any means whatsoever other than through said exclusive representative action. Such labor contracts negotiated by the Committee for and on behalf of the Regular Members of the Association shall be at least two (2) years but not exceed five (5) years duration, subject to the conditions herein set forth, without approval of the Board of Directors. No member or members shall carry on any Roofing, Damp or Waterproofing work during any period when the Association Labor Committee shall have declared an Association Wide lockout or shall have declared a strike against one or more contractors to be a strike against all contractors, and such ceasing of such Roofing, Damp and Waterproofing work shall continue until the non-working period shall be officially declared by the Labor Committee to be at an end. Any such labor contract negotiated by the Committee shall be binding upon the Regular Members of this Association separately and collectively, but shall not impose any individual liability or obligation upon any separate member for the breach of any such labor contract by any other member. When the Labor Committee is constituted for the purpose of negotiating labor contracts with the Union, said Committee shall consist of not less than three (3) members. This Article shall not be considered to be binding on any Associate or Associate Contractor Members.

* * * *

MONTHLY TRANSMITTAL

UNION ROOFERS TRUST ACCOUNT

7638
AUG

EMPLOYER'S NAME and ADDRESS (Please Type or Print)

JC 5(9)

Date

This transmittal Covers ALL Payroll for Month Ending ____________ Set No. ______

Make Checks Payable To:

UNION ROOFERS TRUST ACCOUNT

SOCIAL SECURITY NO.	NAME OF EMPLOYEE (Type or Print) Last First Middle Initial	H & W HOURS WORKED	VACATION HOURS WORKED	JAC HOURS WORKED	URTA HOURS WORKED	DUES CHECK OFF	REMARKS
3726		✓					770
		✓					395
		✓					505
		✓					243
✓		✓					80
	TOTAL HOURS						

RECAP

Payment for Each Hour Worked	AMOUNT
H & W Total Hours x 15¢	
Vacation Total Hours x 20¢	
JAC Total Hours x 1¢	
URTA Total Hours x 1¢	
Dues Check Off Total Hours x 5¢	
Non-Contract No. x $20.00	
TOTAL Pay this Amt.	

If no men are employed during a payroll period, submit a form marked "NONE" so shop will not be carried as delinquent.
List names of EMPLOYERS covered by health and welfare at end of employee list.

Signature of person preparing this form

OCT 3 1963

37

MONTHLY TRANSMITTAL

UNION ROOFERS TRUST ACCOUNT

7311

EMPLOYER'S NAME and ADDRESS (Please Type or Print)

Date SEP

This transmittal Covers ALL
Payroll for Month Ending _____ Set No. _____

Make Checks Payable To:
UNION ROOFERS TRUST ACCOUNT

SOCIAL SECURITY NO.	NAME OF EMPLOYEE (Type or Print) Last	First	Middle Initial	H & W HOURS WORKED	VACATION HOURS WORKED	JAC HOURS WORKED	WRTA HOURS WORKED	DUES CHECK OFF	REMARKS
							7.90		
							6.38		
							6.75		
							3.32		
							4.53		
							5.37		
							1.05		

RECAP

Payment for Each Hour Worked	AMOUNT
H & W Total Hours x 25¢	
Vacation Total Hours x 30¢	
JAC Total Hours x 1¢	
WRTA Total Hours x 1¢	
Dues Check Off Total Hours x 5¢	
Non-Contract No. x $30.00	
TOTAL	
Pay this Amt.	

TOTAL HOURS

If no men employed during a payroll period, submit a "form" and "NONE" shop will not be carried as delinquent. List names of EMPLOYERS covered by health and welfare at end of employee list.

Signature of person preparing this form

OCT 61 ....

MASTER LABOR AGREEMENT

By and Between

Roofing Contractors' Association
of Southern California, Inc.

Roofing Contractors Association
of Orange Co., Inc.
and
OTHERS

and

Locals No. 36 and No. 72

of the
United Slate, Tile and Composition
Roofers,
Damp and Waterproof Workers
Association,
Representing the Geographical
Area of Los Angeles,
Ventura and Orange Counties

August 15, 1963 to
12:01 A.M.
August 15, 1967 Inclusive

TABLE OF CONTENTS

ALPHABETICAL SUBJECT INDEX

PREAMBLE

We, the Members of the time-honored Roofing Arts, Trades, and Crafts, for the purpose of insuring the unimpeded flow of labor, under fair, just and equitable conditions, and for the purpose of stabilizing the Roofing Industry therefore this AGREEMENT is made and entered into effective the 15th day of August, 1963, by and between the ROOFING CONTRACTORS' ASSOCIATION OF SOUTHERN CALIFORNIA, INC., ROOFING CONTRACTORS' ASSOCIATION OF ORANGE COUNTY, INC. (for and on behalf of its members and those firms who have executed authorizations for the Association to represent them in labor relations) and such other persons, firms or corporations as may become parties to this Agreement, and LOCALS NOS. 36 and 72 of the UNITED SLATE, TILE AND COMPOSITION ROOFERS, DAMP AND WATERPROOF WORKERS ASSOCIATION, affiliated with the AFL-CIO.

Bargaining Representatives

That the CONTRACTORS hereby recognizes the UNITED SLATE, TILE AND COMPOSITION ROOFERS, DAMP AND WATERPROOF WORKERS ASSOCIATION, namely Locals No. 36 and No. 72, representing the geographical area of Los Angeles, Ventura and Orange Counties, as the sole and exclusive bargaining representatives under the terms of this Agreement. The UNIONS hereby recognize the ROOFING CONTRACTORS' ASSOCIATION OF SOUTHERN CALIFORNIA, INC. And ROOFING CONTRACTORS' ASSOCIATION OF ORANGE COUNTY, INC., as the sole and exclusive bargaining representatives for its Members and such OTHERS of the Roofing Contractors of Los Angeles, Ventura and Orange Counties as these Associations are authorized by this Agreement and/or by law to represent, under the terms of this Agreement.

ARTICLE I

Scope of Jurisdiction

1. This Agreement shall cover the application of all roofing, waterproofing, slate, tile, asbestos (rigid), as-

bestos and composition siding and roof insulation materials which shall include but not be limited to the following:

All slate of any size, shape, color or material, including flat or promenade slate when used for roofing or siding.

All tile of any size, shape or color, and in any manner laid including flat or promenade tile when used for roofing or siding.

All asbestos shingles or asbestos of any size, shape or color, and in any manner laid when used for roofing or siding.

All cementing in, on or around the said slate, shingle or tile;

All laying of felt, paper or any other types of waterproofing beneath the above mentioned work;

All dressing, punching and cutting of all slate, shingles or tile on job site.

All operation of slate, shingle or tile cutting or punching machinery on job site.

Any substitute or new material used for roofing and waterproofing purposes.

All removal of any type of roofing where a roof is to be relaid;

All kinds of asphalt and composition roofing;

All asphalt and mastic when used for damp and waterproofing purposes;

All prepared paper roofing;

All compressed paper, chemically prepared paper, and burlap when used for roofing or damp and waterproofing purposes, with or without coating;

All damp resisting preparations when applied with a mop, three-knot brush, roller, swab or spray system in or outside of building;

All damp course, sheathing or coating on all foundation work;

All tarred floors;

All laying of slate, tile asbestos shingles, and asbestos when laid in pitch, tar, asphalt, mastic, marmolite, or any form of bitumen;

All precast reinforced concrete slabs for roofing when pointed up with or laid upon any preparation of asphalt, roofing cements, or other mastics, on roofs, flat or otherwise;

All hot mastic floor laying;

All bitumastic enameling, pipe wrapping and other rust proofing;

All Thikol, Vinyl and Neoprene and any other plastics used for roofing and waterproofing;

All cleaning up, recoating and protective coating of any type of roof;

2. All roofing materials at the job-site shall be loaded by employees covered under the terms of this Agreement.

3. All of the Work mentioned above and all other work that comes under the jurisdiction of Roofers and Waterproofers shall be done by employees covered by this Agreement.

4. All job site equipment (including motorized equipment) used for the handling of roofing and waterproofing materials as listed above shall be under the jurisdiction of the Roofers and Waterproofers and will be run by employees covered by this Agreement.

5. All work mentioned or implied above shall be and is a first assignment of said work to Roofers and Waterproofers covered by this Agreement.

6. Composition Shingles may be installed under this contract.

ARTICLE II

Definitions

The following will be definitions of words, terms or phrases used in this Master Labor Agreement.

A. *Apprentice:* Means one who is learning the roofing trade and who is indentured under the State and Federal Apprenticeship Standards as hereinafter provided.

B. *Contractor-Employer:* Means one who hires, controls and/or directs another and pays wages and complies with all requirements as set forth in this agreement.

C. *Discharged:* Means termination of employment.

D. *Employee:* Means one who works for another for wages and is in such a relation to the other person that the latter may control the work of the former and direct the manner in which it shall be done.

E. *Enameler, Protective Coating Worker and Pipe Wrapper:* Means a man who prepares surfaces and applies protective coating, bituminous or otherwise, to pipes, conduits, surfaces and articles.

F. *Foreman:* Means a Roofing Journeyman who has the Contractor's work order and is appointed by the Employer to supervise other Roofing Employees and their work and is responsible for the proper execution of the work, the satisfactory completion of the work, and is to account for all equipment and material on the job, and shall keep an accurate record of all time worked by men under his supervision.

G. *Free Zone:* Means a geographical area within which an Employee is not paid for travel time.

H. *Job Site:* Each place at which roofing work of any type is being performed.

I. *Journeyman Roofer:* Means an employee who has completed his apprenticeship training on roofing and waterproofing work or who has qualified by an approved examination.

J. *Just Cause:* Means failure of any Employee to practice his craft or perform his labor in a workmanlike manner according to the accepted rules, as interpreted by the Joint Labor Relations Boards.

K. *Lay-Off:* Means suspension of employment of the Employee by the Employer for an indeterminate time.

L. *Regular Employee:* Means one who has worked for a contractor for wages at least sixty (60) working days during the previous six (6) month period.

M. *Roofer:* Means an applicator of Slate, Tile, Asbestos and Composition shingles, built-up roofing or of any product which is or may be used for roofing, except those Employees who apply wood and/or metal shingles.

N. *Shop:* Means regularly established place of business as provided in ARTICLE III, SECTION C of this Agreement.

O. *Shingle or Sider:* Means an employee who applies any type of shingles or siding, other than wood or metal, to the exterior of any structure.

P. *Slowdown:* Means a deliberate lessening of production output by Employee or Employees as a result of a labor dispute.

Q. *Starting Time:* Means the time when the Employee must be prepared to commence work.

R. *Steward:* Means an Employee appointed by the Unions to represent the Unions on a job or in a shop.

S. *Strike:* Means authorized cessation of work by the Employee or Employees as a result of a labor dispute.

T. *Sub-Foreman:* Means one who works as a sub-foreman under the supervision of the Foreman having the Contractor's work order.

U. *Tools:* Personal tools means hammer, cutting knives, tin snips, trowels, tile pick, hard hats and proper shoes or any other tool, instrument or implement used by one hand needed to do his work, and said tools must be in the possession Employee when reporting for work.

V. *Union Membership:* Means Membership in any Union affiliated with the United Slate, Tile and Composition Roofers, Damp and Waterproof Workers Association within the geographical jurisdiction of Locals Nos. 36 and 72.

W. *Working Member:* No more than one member of the firm who must be designated on the application at the time this contract is signed by the firm may work on the job site.

X. *Work Stoppage:* Means an unauthorized cessation of work by Employee or Employees as a result of a labor dispute.

ARTICLE III

Contractor's Eligibility

A Contractor shall be any person, persons, firm or corporation engaged in the application of roofs, dampproofing and/or waterproofing and all other activities as set forth in Article I of this Agreement and he shall be eligible to execute this Agreement providing he meets the following conditions:

A. Be the holder of a current C-39 License as issued by the Contractor's State License Board of the Department of Professional and Vocational Standards of the State of California. The holder of the license must execute this Agreement, together with the owner or principal officer of the company, if they are not one and the same as the holder of the license.

B. Carry full Workmen's Compensation, Public Liability Insurance, Property Damage Insurance, proper governmental registration numbers to operate as a contractor and shall submit certificate of said insurance and governmental registration numbers to the Joint Labor Relations Board to be kept on file with that Board. He must operate and maintain a recognized place of business.

C. A recognized place of business is hereby defined as: A place which has a telephone on the premises listed in the name of the licensee, and said place is located in a zone permissable for the operation of said business as required by the laws and ordinances of the area in which said business or shop is located, and has a company sign visible from the street with lettering not less than six inches in height; a place from which men are sent to the job site, a place to change clothes and safely store employees' tools and sanitary facilities on the premises; a place from which employees and equipment are dispatched and a place where all materials as per ARTICLE I shall be regularly stored.

All necessary records to conduct a business including the writing and issuing of payroll checks. Complete payroll records will be kept.

D. No more than one roofing company shall operate from the same premises unless authorized by the Joint Labor Relations Board.

E. Contractor shall be required to post an indemnity or cash bond in the minimum amount of $1,000.00, as described in ARTICLE IV and same shall be deposited with designated Trustee.

ARTICLE IV

Bonds

A. A contractor shall have the option of choosing one of the following types of bonds which shall be recognized as complying with the terms of this agreement: Individual Cash Bonds, Individual Surety Bonds, Roofing Contractors' Association group Surety Bond, or any other Joint Labor Relations Boards approved Group Surety Bond.

B. Any bond written and given to the Joint Labor Relations Board or their designated Trustee in compliance with the terms of this agreement shall be in the minimum amount of $1,000.00. However, when a signatory Contractor issues a non-negotiable check in payment of wages, subsistence, fringe benefits or other remuneration to employees covered by this agreement, and same is not made good within 24 hours from time of issuance, in addition to being in violation of Section 203.1 of the State Labor Code, he will also be subject to the following action by the Joint Labor Relations Boards. At its discretion this Board may require additional bond indemnification up to $1,000.00 for each offense, not to exceed $3,000.00 in total indemnification. Failure to provide additional indemnification within five (5) days as outlined above will be cause for immediate removal of all employees covered by this Agreement.

C. As an alternative the Joint Labor Relations Board is authorized to require a delinquent Contractor in addition to his present bond, to post with designated Trustee a cash or surety bond in an amount equivalent to not less than double the average monthly contributions made to all Funds for the preceding year by said Contractor and said cash or surety bond shall be used to guarantee continued future contributions to the Funds and to assure against future delinquencies by said Contractor.

D. The Joint Labor Relations Boards as set forth in Article VII hereof may assess a bond for any delinquency (1) of payments for wages, subsistence, and other remuneration to the Employee (provided that a written claim therefor is filed with the Joint Labor Relations

Boards within (30) days after the date when due), that are due, payable and unpaid to employees; (2) of payments of fringe benefits past due to the Union Roofers Trust Account, and (3) for liquidated damages and assessments in whole or in part for violation of the terms and conditions of this Agreement.

E. The bond of the indivdual contractor and the bond of any recognized Association, or any other bond, shall at all times be maintained in the full amount hereinabove set forth, for each contractor. Said Bond shall indemnify employees of the signatory contractors with regard to payment of wages, fringe benefits, subsistence and travel time as set forth in this Agreement and other remuneration to the employee and shall further indemnify the employees and the Trust Funds with respect to payments required to be made by the signatory contractors to all of the Trusts that are a part of this Master Labor Agreement, and for any liquidated damages or assessments that may become due under this contract or are levied by the Joint Labor Relations Boards as set forth in this Agreement.

F. All Bonds, Surety or Cash, shall also indemnify all employees of all signatory contractors to the Joint Labor Relations Board for payment of all wages, fringe benefits, subsistence payments and other remuneration to the employees or travel time that may become due to signatory contractors' employees, whether they be under the jurisdiction of Locals 36 and 72 (the Signatory Unions) or other Roofing Locals in other geographical areas within the State of California, when a signatory contractor is performing work in such other geographical area. Such indemnification amounts that may become due and remain unpaid shall, upon written notice presenting satisfactory proof of same by the Local Union in the area where the work was performed, be assessed against the signatory contractor's bond by the Joint Labor Relations Board and be forwarded to that Union for payment to the men and/or Trusts concerned. This Section F shall be effective only when there exists a reciprocal agreement to the same effect between this Joint Labor Relations Board and the Joint Labor Relations Board, Joint Conference Board or

by whatever name the Collective Bargaining Agreement's administrative body for such other geographical area is called.

G. 1. *Individual Surety Bond*—The surety shall bind itself to pay any assessments made by the Joint Labor Relations Board on any signatory Contractor for items covered in Section E & F above, after a hearing and vote as provided in ARTICLE VII herein up to the full amount of the bond currently in effect for obligee.

2. *Association or Group Surety Bond*—In lieu of the individual surety bond hereinabove provided for, any approved roofing contractors' association of twenty (20) members or less, recognized as such by the Joint Labor Relations Board, may post a minimum group bond of $10,000.00 to indemnify the employees of their specified members individually to a liability of $1,000.00 per member. For each additional four (4) members, or fraction thereof, in excess of twenty (20) such group bond shall be increased by $1,000.00. Any Association availing itself of this option shall provide a list of all its members who are covered by said bond to the Joint Labor Relations Boards and shall keep such Boards advised as to any deletions or additions at least every thirty (30) days. A revised list showing the current members covered shall be provided the Joint Labor Relations Boards on each anniversary date of this Agreement. The surety for any such group bond shall likewise bind itself to pay any assessments made by the Joint Labor Relations Boards for all items covered in Sections E & F above after a hearing and vote as provided in ARTICLE VII hereof up to the basic minimum $1,000.00 penal sum per employer as set forth herein. If any additional indemnification is required as set forth in ARTICLE IV, SECTION B, it shall be provided in a separate individual bond by the signatory contractor.

3. *Cash Bond* (a) A cash bond in the minimum amount of $1,000.00 or such additional amounts as may be fixed by the Joint Labor Relations Boards under certain circumstances as set forth herein above, maybe deposited with the designated trustee of the Joint Labor Relations Board in lieu of a surety bond.

(b) Such cash bond shall be subject to levy by the Joint Labor Relations Board for any assessments made by this Board on any signatory contractor for items covered in Sections E & F above after a hearing and vote as provided in ARTICLE VII hereof up to the full amount of such bond.

(c) Said cash bond principal amount, once deposited, shall be refunded only when this Agreement has been terminated or 90 days after a written application to the Joint Labor Relations Boards has been accepted presenting satisfactory proof to them that the Contractor is no longer contracting work within the jurisdiction of any local Union signatory hereto.

(d) The Trustee shall have the authority to deposit all of, or any part of said funds, as received, in a Savings and Loan Association or a Commercial bank account, together with funds from other Contractors, or the Trustee shall have the authority to invest not more than 75% of said funds, together with funds received from other contractors, in United States Government Bonds, Certificates of Deposits or such other investments approved for Trust Funds.

4. THE UNION ROOFERS TRUST ACCOUNT shall collect all income received by reason of bond assessments, interest or otherwise derived from the investment or deposit of said cash bond funds. The income shall first be applied to the payment of expenses of administration of the Joint Labor Relations Boards and secondly to the payment of taxes of all kinds, and any balance of income shall be retained by the UNION ROOFERS TRUST ACCOUNT. The depositing Contractor or Association shall pay any taxes levied on his proportionate share of said funds, if any.

5. The refund of the Contractor's deposit upon direction of the Joint Labor Relations Boards shall be less all assessments and levies on the principal authorized by the Joint Labor Relations Boards under the procedures set forth in this contract.

6. In the event a Contractor who does not have an established place of business within the geographical jurisdiction of this Agreement, performs work covered by

this Agreement in the geographical jurisdiction covered by this Agreement, he shall not be required to furnish the bond required by this Agreement provided that the Union, Joint Labor Relations Board, Joint Conference Board, or other similar administrative agencys in the jurisdiction where said Contractor has his principal office, has a reciprocal agreement with the Joint Labor Relations Board established by this Agreement according signatory Contractors to this Agreement the same privileges regarding the furnishing of a bond as set forth in this section.

ARTICLE V

Union Recognition—Hiring—Discharging

All signatory Contractors hiring employees shall abide by the terms of this Section with regard to the provisions set forth hereinafter.

1. The exclusive bargaining rights shall be vested in the signatory parties to this Agreement up to and including August 14, 1967, and any extensions and renewals thereof.

2. In the event a Contractor is in need of employees in addition to those currentlly in his employment, he shall use the appropriate Union Hiring Hall as the exclusive source of employees, save and except as hereinafter set out.

3. That the Local Unions shall upon demand refer to the Contractors the called for number of availalble qualified, competent and skilled workers of the skills demanded.

4. The Unions shall provide hiring halls as the exclusive source of employees.

(a) All employees shall have been assigned from a recognized hiring hall.

(b) No employees shall transfer from one company to another.

(c) An employee who is defined as not in good standing shall be laid off within twenty-four (24) hours upon written notification by the Union.

5. That the Contractors shall give reasonable advance notice to the Local Union of their demands for employee referrals, said notice to be oral or written.

6. That the Contractors, when no employees are available through Local Unions within twenty-four (24) hours (after giving notice as set out in Section 5 above), may procure workmen from other sources.

7. That the Contractors shall have the right to reject any referred employee, provided however, that said rejected referred employee shall be paid by said rejecting Contractor at the wage rate set out herein, for a four (4) hour period as show up time. Any employee dispatched from the hall before 8:30 shall be paid from the regular starting time.

8. In the event that hirings are made under Section 6 above, the Contractors shall within twenty-four (24) hours, report in writing to the appropriate Local Union each such hired workman by name and Social Security number.

Contractor shall provide the job foreman with same information at the time of the starting of said employment.

9. The Union Hiring Halls shall be conducted in the following manner:

(a) Without reference to rules, regulations, by-laws, constitutional provisions or any other aspect or obligation of union membership, policies or requirements or lack of union membership.

(b) Maintenance of non-discriminatory hiring lists.

(c) Non-discriminatory placement of applicants' names upon lists in the chronological order in which they present themselves in person for employment.

(d) Dispatching to requesting Contractors with referral slip bearing Social Security number, skill classification, rate of pay, Contractor's name and address, and address of place to report, dues check-off authorization, time and date of dispatching.

10. *Classification of Employees:* Employees shall be classified as follows:

CLASS A: All men who have had three (3) or more years of local experience in the trade and who have passed an examination.

A1: Apprentices actively engaged in the Apprenticeship Program as set forth in this Agreement.

CLASS B: All men who have had less than three (3) years local experience and who have passed an examination.

CLASS C & TEMPORARY HELP:

All men who are not qualified by way of local experience and who have not passed the necessary examination nor enlisted under the apprenticeship program as above. All men so classified shall remain so until tlhey comply with these provisions.

(a) Local experience as used herein shall be experience in the work and trade within the geographical area of Orange, Los Angeles and Ventura Counties in the State of California.

(b) Three (3) years experience as used herein is defined to mean 120 weeks of employment in the work and trade within five (5) years last past.

(c) In the event a Journeyman from another Local Union, by transfer, is placed in employment prior to having taken the examination as required herein, said Class C employee shall take an examination within thirty (30) days, and in the event he fails to do so, he shall thereafter be classified as Class C Employee until such time as he has successfully passed the examination. However, failing to pass the examination, said Class C man cannot take the classification test for a period of six (6) months.

(d) Examination as used herein shall be a test of uniform skills and knowledge in the trade as prepared by the Joint Labor Relations Board and given by a representative thereof.

(e) To require all applicants to fill out an application card at the Union Hiring Hall, stating the applicant's name and address, amount, type and place of experience and name and address of last Employer. To enroll the name, but not dispatch any applicant who willfully gives false or misleading information on his application card until such false or misleading information is corrected and the true facts ascertained. The burden to present required information or verification thereof shall be upon the applicant.

(f) Any applicant feeling aggrieved under the provisions of this Article may appeal to a committee which is composed of one member appointed by the Union, one Contractor member appointed by the Contractor members of the Joint Labor Relations Board and a public member appointed by both of these members. It shall be the function of the Appeals Committee to consider any complaint of the employee or applicant for employment arising out of the administration of the local hiring hall. The Appeals Committee shall have the power to make a final and binding disposition which shall be complied with.

(g) To dispatch regular employees by name upon written request of the Contractor regardless of said requested regular employee's position on the list. The regular employee shall bring a letter from the Contractor to the hiring hall at the time of dispatch.

(h) All workmen employed by one or more of the Contractors for a period of eight (8) days continuously or accumulatively from the date of employment or effective date of this Agreement, whichever is later, shall as a condition of employment make application and tender the uniform initiation fees and dues in effect in the Union, signatory hereto having work and area jurisdiction and if said period may be shortened under the Taft Hartley Act (by amendment thereto), said minimum period designated shall be automatically incorporated herein.

11. That admission to the Local Union shall be upon terms and qualifications uniform and equal to all employees in the trade.

12. It is expressly understood and agreed by the parties hereto that in dispatching employees under this MASTER LABOR AGREEMENT the Local Unions assume no responsibility for the skill, competence or experience of the employees dispatched.

13. In the absence of express written request as set out herein referrals shall be made in the following order of precedence:

LIST NO. 1—CLASS A JOURNEYMEN
INDENTURED APPRENTICES

LIST NO. 2—CLASS B JOURNEYMEN

LIST NO. 3—CLASS C MEN

LIST NO. 4—TEMPORARY HELP

14. Contractors shall not discharge any employee covered hereunder for Union Activity, which does not interfere with the proper physical performance of his work, nor shall Contractors discriminate in any manner whatsoever for such activity, nor shall any employee be discharged for asking for proper compensation and fringe benefits as required by this Agreement.

15. ALL CLASS C and/or TEMPORARY HELP employees must upon notice by the Union Hiring Hall be laid off within twenty-four (24) hours and replaced with CLASS A, APPRENTICES or B men, when such help is available for steady employment.

16. The provisions of this article shall be posted verbatim in clear, bold type in a conspicuous place in the Union Hiring Halls and in those places where employees or applicants for employment may read the same at Contractor's place of business.

17. All hiring, dispatching and referral practices by the parties hereto shall be mutually open to inspection of the other party at any and all reasonable times.

ARTICLE VI

Strikes—Lockouts—Jurisdictional Disputes

A. That it is the purpose and intent of the parties hereto that all grievances or disputes arising between them over the interpretation or application of the terms of this Agreement shall be settled by the procedure set forth in Article VII hereof; and that during the terms of this Agreement the UNIONS signatory hereto, or in whose behalf this Agreement is made, shall not during the term hereof, call or engage in, sanction or assist in a strike against, or any slow-down or stoppage of the work of the CONTRACTORS; and each of them will require its Members to perform their services for the CONTRACTORS on the work described herein when required by said CONTRACTORS to do so; and, during the term of this Agreement, a CONTRACTOR signatory to this

Agreement shall not cause or permit any lockout of the Members of the UNIONS signatory hereto.

B. That the UNIONS guarantee, during the term hereof, that there shall be no strikes, slow-downs or stoppages of work occasioned by jurisdictional disputes.

C. That all jurisdictional disputes between the signatory UNIONS and any other Unions affiliated with the American Federation of Labor and C.I.O. shall be determined in the manner and by the procedure established by the National Joint Board for the Settlement of Jurisdictional Disputes; or, in the event the National Joint Board for the Settlement of Jurisdictional Disputes is abolished the procedures established by the Building and Construction Trades Department of the American Federation of Labor shall prevail. Such determinations shall be binding upon and accepted by the CONTRACTORS and the UNIONS.

D. Nothing contained in this Agreement or any part thereof, or in this Article VI or any part thereof, shall affect or apply to the UNIONS in any action they may take against any CONTRACTOR who has failed, neglected or refused to comply with or execute any settlement or decision reached through the final grievance procedures or the jurisdictional determinations of the National Joint Board for the Settlement of Jurisdiction Disputes, or in the event of its abolishment, the Building and Construction Trades Department of the American Federation of Labor; or the Joint Labor Relations Boards, as set up herein, or the Arbitration Committee, as set up herein.

ARTICLE VII

Grievance Procedure

A. There is hereby established two Joint Labor Relations Boards which shall have only the authority to perform the functions set forth herein. The Los Angeles County Joint Labor Relations Board shall be composed of six (6) representatives of the Contractors, all of whom must be actively engaged as Roofing Employers, and six (6) representatives of the UNIONS, all of whom shall

be active Members in good standing of the Local which they represent. The Orange County Joint Labor Relations Board shall be composed of four (4) representatives of the Contractors, all of whom must be actively engaged as Roofing Employers, and four (4) representatives of the Unions, all of whom shall be active Members in good standing of the Local which they represent. The CONTRACTORS and the UNIONS shall, in addition to their six (6) and the Orange County four (4) regular members, appoint one (1) alternate from each group.

1. The Los Angeles Board covers Los Angeles County and Ventura County, six (6) members Union and six (6) members Employer (one of the Employer representatives shall be from the Orange County Board). The Orange County Board covers Orange County, four (4) Union and four (4) members Employer (one of the Employer representatives shall be from the Los Angeles County Board).

B. Each of the parties hereto shall, within thirty (30) days after execution of this agreement, appoint their representatives and alternates and designate one (1) regular representative as Chairman. Immediately upon the appointment of such representatives, each party hereto shall notify the other party, in writing, the names and business addresses of each of the representatives and of its alternates, and specify in said notice the representative elected as Chairman.

C. Regular meetings of the Los Angeles Joint Labor Relations Board shall be held on the second working day of the first week of each calendar month, unless notice to the contrary has been given, and any postponement shall not be over seven (7) days. Special meetings, if required, may be called by either Chairman by notification in writing, to the other Chairman, stating the reason for which the meeting is being called. The Boards shall be precluded from discussing any item other than the subject specified in the request for a special meeting. The Chairman shall notify representatives and alternates of the convening of each meeting through the secretary of the Joint Labor Rlations Boards. The Orange County Joint Labor Relations Board shall meet on the third Tuesday of each calendar month.

D. Fifty (50) per cent of members from each party hereto shall constitute a quorum. Proxies shall not be allowed, and in no event shall the number of votes cast by representatives of either party exceed in number the votes cast by representatives of the other party, regardless of the number of representatives present. The Joint Labor Relations Boards shall require a majority vote to carry any question. The decision of the Boards shall be final, conclusive and binding upon all parties to this Agreement, except as herein provided. All members designated as voting members on the issue at hand must cast a vote. Failure to cast a vote will be considered as a "yes" vote.

E. The Joint Labor Relations Boards shall have the power to impose liquidated damages, and assess the bonds of any party or parties to this Agreement where agreed by vote as above provided, for non-payment of wages and fringes or, for the violation of any Article of this Agreement, provided due notice was given party when violation occurred. Any sums of money to be collected by reason of imposition of liquidated damages or assessments on bond shall be deposited with and must be collected by the Union Roofers Trust Account.

F. The Joint Labor Relations Boards shall have the right to summon, question and examine any party to this Agreement, or their representatives or agents, in connection with any question which may arise over the violation of any Article or Provision of this Agreement.

G. In addition to the functions above set forth, the Joint Labor Relations Boards shall have the authority to review and make recommendations to the parties on matters referred to it by the parties. The Boards may, upon its own motion, make recommendations upon matters arising out of the interpretation, application and operation of the provisions of this Agreement. It is understood and agreed, however, that the Joint Labor Relations Boards shall not have the authority, to make any recommendations which would add to, alter, vary or modify any of the terms or provisions of this Agreement.

H. The Joint Labor Relations Boards shall have the power to designate and appoint one or more persons, who

shall be responsible for the keeping of accurate minutes and records of the Boards.

I. If arbitration is required, only as a result of a deadlock of the Joint Labor Relations Boards, there shall be established a three-man Arbitration Committee composed of one (1) representative of the UNIONS, one (1) representative of the CONTRACTORS, and a third arbiter, selected by the two (2) above appointed arbiters. All arbiters shall be selected within five (5) days, each selected at such time as the Arbitration Committee is required to meet, and shall be, whenever possible, composed of persons not directly involved in the specific dispute. The Arbitration Committee shall hear and review any grievance submitted to it by the Joint Labor Relations Board and shall make final adjudication of the same by majority vote, which shall be final and binding upon all of the parties to this Agreement. Decisions to be made within ten (10) days. The fees and expenses necessary for arbitration and/or the consideration and deliberation of grievances which are the results of a deadlock, shall be paid Jointly by the Contractor and Union. In the event of an appeal of a Joint Labor Relations Boards decision to arbitration, all expenses for this arbitration shall be paid by the losing party.

J. If within five (5) days after the two (2) arbiters attempt to choose a third person to act as arbiter, they are unable to agree upon such third person, the third person shall be chosen by immediately requesting the local office of the Federal Mediation and Conciliation Service to submit the names of five (5) persons qualified to act as arbiters. When said list has been presented, the representative of the UNIONS and the representative of the CONTRACTORS of the Arbitration Committee shall each have the choice of rejecting the names of two (2) of these five (5) persons, and the remaining fifth one shall be selected as the third arbiter within twenty-four (24) hours after submission of said list, and it shall be mandatory for said arbiter to render a decision within five (5) days thereafter, unless extension of time is mutually agreed to by the parties hereto.

K. The parties hereto specifically agree that the decision of the arbiters and/or the decision of the Joint Labor Relations Boards, when not appealed to arbitration, may be enforced as though a judgement of a court of competent jurisdiction.

L. No jurisdictional disputes between the UNIONS signatory hereto, and any other Union shall be submitted for determination to the Joint Labor Relations Boards or the arbiters, but shall be determined in the manner provided for in Paragraph C of Article VI of this Agreement.

M. All grievances, other than jurisdictional disputes, arising out of the interpretation or application of any of the terms or conditions of this Agreement shall be submitted for determination and shall be determined by the procedure set forth in this Article; but neither the Joint Labor Relations Boards nor the arbiters, in determining any grievance, shall have the authority to modify, vary, change, add to, or remove any of the terms or conditions of this Agreement.

N. The members, alternates or duly authorized representatives of the Joint Labor Relations Boards shall not be liable for any decision rendered by them for any reason, except for malfeasance of office.

O. Where a grievance or dispute arises, the Business Agent or Assistant Business Agent shall attempt to adjust such grievance or dispute and he shall notify the other parties in writing at once that such grievance, dispute or violation exists. A copy of this notice shall be retained by the Union and a second copy shall immediately be sent to the Secretary of the Joint Labor Relations Boards.

P. The Union Business Agent or Assistant Business Agent shall have access to the project or shop during working hours for the purpose of checking cards or referrals or of adjusting grievances or disputes, and shall make every reasonable effort to advise the CONTRACTOR, or his superintendant or foreman of his presence on the project.

Q. In the event a dispute or grievance cannot be settled as provided for in Section O, it shall be referred to the Joint Labor Relations Boards by the CONTRACTOR

or the UNION and to the other party, by sending written notice to the Secretary of the Joint Labor Relations Boards. Said notice shall contain the name of the CONTRACTOR and the UNION directly involved, the date and place of occurrence and a brief statement of the nature of the grievance or dispute. Upon receipt of such written notice, the Secretary of the Joint Labor Relations Boards shall set the matter for hearing at the next meeting of the Joint Labor Relations Boards. Copies of the alleged violation contained in the request for the Joint Labor Relations Boards hearing shall be post-marked to all parties involved not less than ten (10) days prior to the established date of hearing. All charges and grievances must be recorded within thirty (30) days after occurrence, with the Secretary of the Joint Labor Relations Boards as above provided.

R. Findings, conclusions and judgment of the Joint Labor Relations Boards shall be made in writing not later than five (5) working days after the termination of the hearing, with copies sent to UNION and the CONTRACTOR directly involved.

S. It is agreed that the Joint Labor Relations Boards shall maintain a complete list of Accredited Roofing Contractors, which shall be made available to all other Accredited Roofing Contractors and the UNIONS.

T. The parties hereto futrher agree that in addition to the Joint Labor Relations Boards and in order that said Joint Labor Relations Boards shall have the opportunity to hear and have presented to them sufficient evidence to decide a particular case, that upon the request of either party to this Agreement, an Investigating Committee shall be formed composed of 1 Union Representative and 1 Contractor Representative to be designated by the respective parties hereto, whose function shall be to investigate any and all complaints made against any of the parties hereto regarding any and all violations of this Agreement. Said Committee, after making it's investigation, shall present it's findings to the Joint Labor Relations Boards.

ARTICLE VIII

Conflicting Agreements

A. That all existing Labor Agreements between CONTRACTORS and the UNIONS, for work covered by this Agreement, shall be superseded by this Agreement.

B. No CONTRACTORS signatory hereto shall be required to pay higher wages or be subject to less favorable working rules than those applicable to other CONTRACTORS employing Members of the UNIONS, performing such similar work in the same jurisdiction.

ARTICLE IX

Additional Signators

A. Any Employer desiring to become a signatory Contractor to this Agreement, or any counterpart of this Agreement, shall first apply in writing to the Union having jurisdiction. The Union shall consider such application, and if it finds that the applicant meets all other requirements of Article III of this Agreement permission to sign this Agreement shall be given. Any investigation which the UNION may require to determine whether the requirements of Article III are complied with shall be completed within ten (10) days after the application was first tendered.

B. Any Contractor coming into the jurisdictional area of Locals 36 or 72, and who have a current Labor Agreement with any Roofers Local of the United Slate, Tile and Composition Roofers, Damp and Waterproof Workers Association, shall sign this Agreement and use 7th and Broadway as his starting point. He shall employ at least 50% of the Journeyman Roofers from the appropriate hiring hall of the Union in whose jurisdiction the job is located.

C. Any Contractor establishing a new roofing contracting business after the inception date of this contract must use 7th and Broadway as his starting point for the first 120 days. Thereafter he may select the starting point nearest his established place of business in accordance with Article XIII, Section A.

ARTICLE X

Duration—Termination—Renewal

A. The term of this Agreement shall commence on August 15, 1963, and continue until 12:01 A.M., August 15, 1967, and for additional period of one (1) year thereafter, unless not less than sixty (60) days prior to August 15, 1967, or 60 days prior to the end of any subsequent yearly period, the ROOFING CONTRACTORS' ASSOCIATION OF SOUTHERN CALIFORNIA, INC., ORANGE COUNTY ROOFING CONTRACTORS' ASSOCIATION, INC., and/or OTHERS, representing the Employers, or the signatory UNIONS, give written notice by mailing, postage prepaid, registered or certified mail, return receipt requested, to the other, of desire to modify and/or amend, or terminate this Agreement. That, if notice is so given by either of the parties as aforesaid, the other party receiving said notice must give notice not less than sixty (60) days prior to August 15, 1967, or the end of any subsequent yearly period, of any modification of or amendments to this Agreement, or any portion thereof, which it desires to negotiate and which are specified in detail in said notice.

B. That negotiations upon the proposed modifications or amendments shall begin not later than forty-five (45) days prior to August 15, 1967, or the end of any subsequent yearly period, and continue until agreement is reached; provided, however, if no agreement is reached by August 15, 1967, or by August 15, of any subsequent yearly period, the signatory CONTRACTORS or the signatory UNIONS, acting in their own behalf, may thereafter give written notice of termination, and the Agreement shall be deemed terminated on the date specified in such written notice of termination.

C. In the event the Roofing Contractors' Association of Southern California, Inc., Roofing Contractors' Association of Orange County, Inc. jointly, and Locals 36 and 72 jointly, agree mutually to reopen any provisions of this Agreement for the betterment of the industry, any such joint and mutual agreement shall be binding upon all sig-

natory parties hereto including OTHERS, but shall not be retroactive. This provision does not apply to Article XI-A unless there is a 10% increase in Department of Labor Consumer Price Index in any one year. Under no condition shall payments under Article XI-B be lowered.

ARTICLE XI

Wages and Fringe Benefits

A-1. EFFECTIVE AUGUST 15, 1963, the following hourly wage rates shall be paid to classifications listed:

	Amount Received	Roofers Fund	Dues Check-off	Total Wage
Foreman	$4.91	.10	.05	$5.06
Sub-Foreman	4.81	.10	.05	4.96
Journeyman	4.56	.10	.05	4.71
Pitch Foreman	5.21	.10	.05	5.36
Pitch Sub-Foreman	5.11	.10	.05	5.26
Pitch Journeyman and Enameler or Pipe Wrapper and Protective Coating Worker	4.86	.10	.05	5.01

EFFECTIVE AUGUST 15, 1963, all new Applicants indentured under the Apprenticeship Program will serve three (3) years and shall be paid no more or no less than the following hourly wage rates. (These will be shown on the front of the yellow Official Apprentice I.D. Card which must be in their possession).

	Total Wage Per Hour
3 Month Probation Period—60% of Journeyman scale	$2.89
Second 3 Month Period —65% of Journeyman scale	3.11
Second 6 Month Period —70% of Journeyman scale	3.34
Third 6 Month Period —80% of Journeyman scale	3.80
Fourth 6 Month Period —85% of Journeyman scale	4.03
Fifth 6 Month Period —90% of Journeyman scale	4.25
Sixth 6 Month Period —95% of Journeyman scale	4.48

(The above are total wage rates and the .10¢ Vacation and .05¢ Dues Check-off shall be deducted from this total).

All Apprentices indentured prior to August 15, 1963, shall receive the hourly wage rate as stated on the face of their blue Apprentice I.D. Card, which must be in their possession.

Class C or Temporary Help shall be paid 74% of the Journeyman hourly wage rate or $3.52 per hour total, from which the .10¢ Vacation and .05¢ Dues Check-off shall be deducted.

It is understood that all overtime pay shall be calculated on the net wage only (less Vacation Fund and Dues Check-off) and then this 15¢ is to be added to the total.

(EXAMPLE: Time and one half for Journeyman—$4.56+$2.28=$6.84+.15=$6.99 total wage.)

B-1. In addition to the above wages the following contributions shall be paid for each hour worked by each Employee working at the roofing trade (whether a paid up member of the Union or not).

.15¢ per hour—Health & Welfare Trust Fund
.01¢ per hour—Administration (Union Roofers Trust Account)
.01¢ per hour—Apprentice Trust (Union Roofers Apprentice Training Trust Fund)

At the same time the above are remitted the .15¢ withheld for Vacation and Dues Check-off are also to be sent to the Union Roofers Trust Account making a total per hour, per employee, of .32¢. This shall be sent in one check accompanied by the monthly transmittal form.

Wages and Fringe Benefits

A-2. EFFECTIVE FEBRUARY 15, 1964, the following changes shall be made:

All wages remain the same.

B-2. In addition to the above wages the following contributions shall be paid for each hour worked by each employee working at the roofing trade (whether a paid up member of the union or not).

.15¢ per hour—Health & Welfare Trust Fund
.01½¢ per hour—Administration (U.R.T.A.)

.01½¢ per hour—Apprentice Trust (U.R.A.T.T.F.)
.05¢ per hour—Roofing Industry Trust (R.I.T.)

At the same time the above are remitted the .15¢ withheld for Vacation and Dues Check-off are also to be sent to the Union Roofers Trust Account making a total per hour, per employee, of .38¢. This shall be sent in one check accompanied by the monthly transmittal form.

Wages and Fringe Benefits

A-3. EFFECTIVE AUGUST 15, 1964, the following hourly wage rates shall be paid to classifications listed.

	Amount Received	Roofers Fund	Dues Check-off	Total Wage
Foreman	$5.17	.10	.05	$5.32
Sub-Foreman	5.07	.10	.05	5.22
Journeyman	4.82	.10	.05	4.97
Pitch Foreman	5.47	.10	.05	5.62
Pitch Sub-Foreman	5.37	.10	.05	5.52
Pitch Journeyman and Enameler or Pipe Wrapper and Protective Coating Worker	5.12	.10	.05	5.27

EFFECTIVE AUGUST 15, 1963, all new Applicants indentured under the Apprenticeship Program will serve three (3) years and shall be paid no more or no less than the following hourly wage rates. (These will be shown on the front of the yellow official Apprentice I.D. Card which must be in their possession).

		Total Wage Per Hour
3 Month Probation Period	—60% of Journeyman scale	$3.04
Second 3 Month Period	—65% of Journeyman scale	3.28
Second 6 Month Period	—70% of Journeyman scale	3.52
Third 6 Month Period	—80% of Journeyman scale	4.01
Fourth 6 Month Period	—85% of Journeyman scale	4.25
Fifth 6 Month Period	—90% of Journeyman scale	4.49
Sixth 6 Month Period	—95% of Journeyman scale	4.73

(The above are total wage rates and the .10¢ Vacation and .05¢ Dues Check-off shall be deducted from this total.)

All Apprentices indentured prior to August 15, 1963, shall receive the hourly wage rate as stated on the face of their blue Apprentice I.D. Card, which must be in their possession.

Class C or Temporary Help shall be paid 74% of the Journeyman hourly wage rate or $3.72 per hour total, from which the .10¢ Vacation and .05¢ Dues Check-off shall be deducted.

It is understood that all overtime pay shall be calculated on the net wage only (less Vacation Fund and Dues Check-off) and then this .15¢ is to be added to the total.

(EXAMPLE: Time and one half for Journeyman—$4.82+$2.41=$7.23+.15=$7.38 total wage).

B-3. In addition to the above wages the following contributions shall be paid for each hour worked by each Employee working at the roofing trade (whether a paid up member of the union or not).

.15¢ per hour—Health and Welfare Trust Fund
.01½¢ per hour—Administration (U.R.T.A.)
.01½¢ per hour—Apprentice Trust (U.R.A.T.T.F.)
.05¢ per hour—Roofing Industry Trust (R.I.T.)

At the same time the above are remitted the .15¢ withheld for Vacation and Dues Check-off are also to be sent to the Union Roofers Trust Account making a total per hour, per employee, of .38¢. This shall be sent in one check accompanied by the monthly transmittal form.

Wages and Fringe Benefits

A-4. EFFECTIVE AUGUST 15, 1965, the following hourly wage rates shall be paid to classifications listed:

	Amount Received	Roofers Fund	Dues Check-off	Total Wage
Foreman	$5.42	.10	.05	$5.57
Sub-Foreman	5.32	.10	.05	5.47
Journeyman	5.07	.10	.05	5.22
Pitch Foreman	5.72	.10	.05	5.87
Pitch Sub-Foreman	5.62	.10	.05	5.77
Pitch Journeyman and Enameler or Pipe Wrapper and Protective Coating Worker	5.37	.10	.05	5.52

EFFECTIVE AUGUST 15, 1963, all new Applicants indentured under the Apprenticeship Program will serve three (3) years and shall be paid no more or no less than the following hourly wage rates. (These will be shown on the front of the yellow official Apprentice I.D. Card which must be in their possession).

		Total Wage Per Hour
3 Month Probation Period	—60% of Journeyman scale	$3.19
Second 3 Month Period	—65% of Journeyman scale	3.45
Second 6 Month Period	—70% of Journeyman scale	3.70
Third 6 Month Period	—80% of Journeyman scale	4.21
Fourth 6 Month Period	—85% of Journeyman scale	4.46
Fifth 6 Month Period	—90% of Journeyman scale	4.71
Sixth 6 Month Period	—95% of Journeyman scale	4.97

(The above are total wage rates and the .10¢ Vacation and .05¢ Dues Check-off shall be deducted from this total.)

Class C or Temporary Help shall be paid 74% of the Journeyman hourly wage rate or $3.90 per hour total, from which the .10¢ Vacation and .05¢ Dues Check-off shall be deducted.

It is understood that all overtime pay shall be calculated on the net wage only (less Vacation Fund and Dues Check-off) and then this .15¢ is to be added to the total.)

(EXAMPLE: Time and one half for Journeyman—$5.07+$2.54=$7.61+.15=$7.76 total wage.)

B-4. In addition to the above wages the following contributions shall be paid for each hour worked by each Employee working at the roofing trade (whether a paid up member of the union or not.)

.16¢ per hour—Health and Welfare Trust Fund
.01½¢ per hour—Administration (U.R.T.A.)
.01½¢ per hour—Apprentice Trust (U.R.A.T.T.F.)
.05¢ per hour—Roofing Industry Trust (R.I.T.)

At the same time the above are remitted the .15¢ withheld for Vacation and Dues Check-off are also to be sent to the Union Roofers Trust Account making a total per

hour, per employee, of .39¢. This shall be sent in one check accompanied by the monthly transmittal form.

Wages and Fringe Benefits

A-5. EFFECTIVE AUGUST 15, 1966, the following hourly wage rates shall be paid to classification listed:

	Amount Received	Roofers Fund	Dues Check-off	Total Wage
Foreman	$5.72	.10	.05	$5.87
Sub-Foreman	5.62	.10	.05	5.77
Journeyman	5.37	.10	.05	5.52
Pitch Foreman	6.02	.10	.05	6.17
Pitch Sub-Foreman	5.92	.10	.05	6.07
Pitch Journeyman and Enameler or Pipe Wrapper and Protective Coating Worker	5.67	.10	.05	5.82

EFFECTIVE AUGUST 15, 1963, all new Applicants indentured under the Apprenticeship Program will serve three (3) years and shall be paid no more or no less than the following hourly wage rates. (These will be shown on the front of the yellow official Apprentice I.D. Card which must be in their possession).

		Total Wage Per Hour
3 Month Probation Period	—60% of Journeyman scale	$3.37
Second 3 Month Period	—65% of Journeyman scale	3.64
Second 6 Month Period	—70% of Journeyman scale	3.91
Third 6 Month Period	—80% of Journeyman scale	4.45
Fourth 6 Month Period	—85% of Journeyman scale	4.71
Fifth 6 Month Period	—90% of Journeyman scale	4.98
Sixth 6 Month Period	—95% of Journeyman scale	5.25

(The above are total wage rates and the .10¢ Vacation and .05¢ Dues Check-off shall be deducted from this total.)

Class C or Temporary Help shall be paid 74% of the Journeyman hourly wage rate or $4.12 per hour total, from which the .10¢ Vacation and .05¢ Dues Check-off shall be deducted.

It is understood that all overtime pay shall be calculated on the net wage only (less Vacation Fund and Dues Check-off) and then this .15¢ is to be added to the total).

(EXAMPLE: Time and one half for Journeyman—$5.37+$2.69=$8.06+.15¢=$8.21 total wages.)

B-5. In addition to the above wages the following contributions shall be paid for each hour worked by each employee working at the roofing trade (whether a paid up member of the union or not.)

.17¢ per hour—Health and Welfare Trust Fund
.01½¢ per hour—Administration (U.R.T.A.)
.01½¢ per hour—Apprentice Trust (U.R.A.T.T.F.)
.05¢ per hour—Roofing Industry Trust (R.I.T.)

At the same time the above are remitted the .15¢ withheld for Vacation and Dues Check-off are also to be sent to the Union Roofers Trust Account making a total per hour, per employee, of .40¢. This shall be sent in one check accompanied by the monthly transmittal form.

C. The Contractor and Employee agree that the 10¢ Vacation and 5¢ Dues Check-Off are to be withheld from the weekly paycheck after all applicable State and Federal Taxes due by reason of these payments are paid by the Contractor from other sums due the Employee and remit same to the Union Roofers Trust Account, who in turn, shall see that these amounts, together with a copy of the monthly transmittal report are forwarded to the Unions and the Vacation Trust for credit to the Employees account.

D. Contributions for the Union Roofers Trust Fund (Health & Welfare), the Roofers Fund (Vacation) the Union Roofers Apprenticeship & Training Trust Fund, the Union Roofers Trust Account (Administrative), the Roofing Industry Trust (Industry Improvement) and the Union Dues Check-Off, all of which are required by this Collective Bargaining Agreement, shall be paid for all hours worked by all employees of the signatory Contractor covered by this agreement to the Roofers Depository each month, on one transmittal report form in such detail and manner as instructed thereon. Each Contractor shall file such monthly report regardless of whether the Contractor

has employed any employees in the month covered by the report.

All of the above mentioned Trust Agreements are hereby incorporated in full and made a part of this Collective Bargaining Agreement and are agreed to and shall be binding upon all parties signatory hereto.

E. The above contributions shall be forwarded to Roofers Depository at a Central Depository (The First Western Bank, or others that may be designated later) on or before the 15th day of the month following the calendar month that the employees worked. A five (5) day grace period will be allowed, however any contractor who fails to make his contributions postmarked on or before the 20th day of each month shall be considered delinquent.

F. All delinquent Contractors are obligated and liable for the following:

(a) Each delinquent Contractor shall pay to that Fund as liquidated damages the sum of ten percent (10%) of all amounts due or Ten Dollars ($10.00), whichever is greater.

(b) Each delinquent Contractor shall upon demand pay to the Fund involved interest on unpaid contributions and on delinquency charges and on liquidated damages at the rate of seven percent (7%) per annum from the first day of the month in which they are due and until paid.

(c) The Trustees of the Fund involved may within sixty (60) days after a Contractor is delinquent, through the Administrator, instruct legal counsel to institute legal action to enforce collection. A delinquent Contractor shall pay all reasonable attorney fees, court costs and other expenses incurred in the enforcing of collection from such Contractor, shall pay all reasonable attorney fees, court costs and other expenses incurred in the enforcing of collection from such Contractor, and each Contractor shall make all applicable books and records including State, Federal Tax Returns and Compensation report, available for such purpose. Collection actions may be brought by the Trustees of the Fund in the name of the Fund, or in the name of the Trustees or in the name of any assignee, agent or party to this Agreement as determined by the Trustees.

(d) A delinquent Contractor shall be liable to any employee affected by such delinquency for a sum equivalent to the value of the benefits lost to the employee by reason of delinquency of such Contractor. The Health and Welfare Fund shall in such event, provide coverage to employees for whom a Contractor has failed to make the proper contribution, provided that said employees can prove to the satisfaction of the Joint Labor Relations Board that he actually worked the number of hours claimed by said employee. In the event such an employee is given coverage as above set forth, the delinquent Contractor shall be liable to reimburse the Health and Welfare Fund for the cost or value of any benefits made available by the Health and Welfare Fund to the employee affected by reason of the failure of the Contractor to make the proper contribution on behalf of the employee.

(e) The Unions shall remove employees covered by this Agreement from employment with a delinquent Contractor providing advance notice of not less than twenty-four (24) hours is given of such action to the delinquent Contractor. Such removal of employees and cessation of work by employees for such delinquent Contractor shall continue until the Administrator of the Fund involved verifies that there is no money owing to the Fund by such Contractor.

(f) A Contractor may be absolved of any or all of the foregoing liabilities if he satisfies the Trustees that he failed to pay any contributions or to report because of honest mistake, clerical error, or other reasons satisfactory to the Joint Board of Trustees. Whenever a Contractor claims that his failure to make the required contributions was due to honest mistake or clerical error and requests relief for that reason, it shall be considered provided the Contractor agrees in writing to an audit of his records by an auditor appointed by the Joint Board of Trustees. If the audit reveals to the Trustees that such failure to pay was not due to honest mistake or clerical error, then the Contractor shall pay the cost of the audit; otherwise the Arust Fund will pay for the cost of the audit. Any employer shall be entitled to credit for or refund of money paid to any Trust by reason of clerical error or mistake and the Trustees are authorized to refund such monies.

The acceptance of any contributions from any Contractor shall not release or discharge him from the obligation to contribute for all hours worked under this Agreement for which no contribution has actually been received notwithstanding any statement, restriction or qualification appearing on any check from any Contractor.

(g) Each Contractor signatory to this Agreement agrees that one copy (the blue copy) of the monthly transmittal report retained by hfm shall be posted by him in his place of business in such place that it may be readily seen by his employees.

(h) In order to properly enforce this Agreement it is further mutually agreed and understood that all contractors signatory to this Agreement shall keep true and accurate records of their payroll including hours worked at regular and overtime rate and expenses paid to all employees covered by this Agreement, and shall make them accessible for audit by the Trustees of any of the Trust Funds, or their appointees, or disinterested representative appointed by the Joint Labor Relations Board. The cost of such audit will be borne by the Trust Fund or Funds involved unless such audit discloses errors in the bookkeeping or payments of wages and/or fringe benefits by the Contractor, in which case, the contractor being investigated will bear the full cost of said audit.

ARTICLE XII

Hours of Work—Overtime—Holidays

A. *Work Day*—Eight (8) consecutive hours between the hours of seven-thirty (7:30) o'clock A.M., and four (4:00) o'clock P.M., exclusive of one-half (½) hour meal period shall constitute a work day. Arrangements may be made with the Local Union having jurisdiction in that area and a special starting permit will be issued which will remain valid for the duration of the job and/or special conditions.

B. *Work Week*—The regular work week shall consist of forty (40) hours Monday through Friday.

C. *Emergency Work*—Shall be paid for at the rate set forth under Section D "Overtime". Emergency work

is defined as follows: Work that must be done outside the regular working hours for the protection of life or property due to wind, flood, earthquake, or other Acts of God, or the Public Enemy. The Contractor shall obtain a permit from the Unions for all work done on Saturdays, Sundays, and holidays, said permit to be obtained from the Union office prior to 4:30 P.M. the day before said work is to be done. The Contractor shall give the names of the men to be working and the location of the work. Any employee not in good standing shall not be given an opportunity for work under this section.

D. *Overtime*—All overtime worked other than on Sundays and Holidays covered by this Agreement shall be at time and one-half the regular straight time rate. All overtime worked on Sundays and Holidays covered by this Agreement shall be at double straight time rate. Any fraction of hour worked during the regular working day shall be paid to next hour. Overtime shall be paid only for actual time worked.

E. *Holidays*—Every Sunday of the year and the following specific days, to wit: New Year's, Memorial Day, Fourth of July, Labor Day, Thanksgiving and Christmas. Should any of the above named Holidays fall on Sunday, then the following Monday shall be a Holiday.

ARTICLE XIII

Transportation

A. The free travel zone shall be all jobs which are within a radius of twenty-five (25) miles, as designated by the official maps, from the starting point designated by the Contractor at the time he signs this Agreement, which must be the starting point nearest to his established place of business. The starting points must be chosen from one of following locations: Seventh and Broadway, Los Angeles; Labor Temple, Palmdale; City Hall, Van Nuys; City Hall, Santa Ana; City Hall Pomona; City Hall, Whittier; City Hall, San Pedro; City Hall, Ventura; City Hall, Laguna and City Hall, Santa Monica. All Contractors whose established place of business is under

the jurisdiction of Local No. 72 Long Beach shall use City Hall, Bellflower as their starting point.

NOTE: Official maps shall be adpoted by the Joint Labor Relations Board and shall be retained on file and are available at the Main Union Hall for inspection.

B. At the option of the Contratcor, Employees may report to the job when such job has existed and been worked for two (2) day period. On all other jobs, and including the first two (2) days above referred to, men shall start from the Shop at Contractors designated starting time. On jobs of over two (2) days duration Contractor may dispatch equipment from shop to job so that it will be at the job at the starting time. Any Employee who reports to the shop and is then told to report to a specific job he shall be paid from the time he leaves the shop.

C. When the Employee is required to report to the Contractor's Shop, the Contractor shall furnish transportation to the job, from job to job, and from the job to the Shop. It shall be the duty of the Foreman to assign places for the men to ride in the provided vehicles for the purpose of complying with Safety Order No. 1168, or other safety orders. When the Contractor requests the Employee to use his own personal vehicle, he shall be reimbursed at the rate of ten (10) cents per mile for use of same. The Employee who uses his own means of transportation by preference shall not receive compensation for the use of same.

D. For all jobs outside the Free Zone, the Employee shall receive travel time and transportation from Contractors starting point to and from the job. In the event public transportation is used on jobs outside the Free Zone, the Employee shall be reimbursed the regular bus fare. The travel time paid shall be that of the scheduled travel time of the franchised bus service servicing the area, and shall not be considered working time, nor counted as hours worked, but shall be paid at the regular straight time hourly rate in effect at that time, unless a different rate is required by law.

E. An Employee, driving contractor's vehicle to and/or from the job, shall receive compensation at straight time for said driving unless a different rate is required by law.

F. On all work outside the Free Zone, when the Contractor requests the Employee to remain overnight, the Contractor shall reimburse all Employees the sum of ten ($10.00) dollars per day for each day, or fraction thereof or, the Contractor shall provide to the Employees adequate and acceptable room and board when the job is located in a remote and out of the way place, as interpreted by the Joint Labor Relations Boards.

G. The Employee shall not use or be required to use his own personal vehicle to haul, hoist or transport any material or equipment other than his own tools and personal effects.

H. When the Employee is required by the Contractor to load the truck or vehicle, or performs any labor for the Contractor before leaving the Shop, the Employee's compensation shall start at the time he began work at the Contractor's Shop.

I. Each Contractor hiring workmen under the terms of this Agreement shall have identification signs, seals, decals or stickers of not less than 36 inches square in area, visible from the outside of each side of his trucks. If the identification is placed on the truck in letters of not less than 3 inches by ¼ inch, the minimum 36 inches square need not apply. This requirement must be met within 15 days of signing.

J. When Employees are transferred in vehicles furnished by the Employers, such transportation shall be conducted in a safe and lawful manner.

K. When an Employee is transported in a vehicle furnished by the Employer, said vehicle shall be fully covered by liability insurance insuri[illegible] to the benefit of said passenger employees at the CONTRACTOR'S expense in an amount not less than Ten Thousand Dollars for one passenger and Twenty Thousand Dollars for more than one passenger, and the CONTRACTOR agrees that said insurance shall be satisfactory to the Joint Labor Relations Boards.

ARTICLE XIV

Composition of Crews

There shall be not less than one (1) Foreman for each Crew, and a Crew shall consist of the following:

A. Three (3) Employees, composed of one (1) Foreman and two (2) Men, except as provided for in Article XIV, Paragraph E.

B. On a multiple type construction there shall be one (1) Foreman for each Crew.

C. On an individual structure, where five (5) or more men are employed, there shall be one (1) Foreman employed for the first five (5) men, and one (1) Sub-Foreman for each additional five (5) men, or fraction thereof, on said structure, as per the following schedule:

(1) Crew of 5 men—1 Foreman, 4 men.
(2) Crew of 6 to 10 men—1 Foreman, 1 Sub-Foreman.
(3) Crew of 11 to 15 men—1 Foreman, 2 Sub-Foreman.
(4) Crew of 16 men or over—1 Foreman, 3 Sub-Foreman.

D. (1) There shall not be more than 1 Indentured Apprentice for every four (4) Journeyman in each shop, when qualified help is available.

(2) The ratio of men on a job shall not be greater than one (1) Indentured Apprentice for two (2) Journeymen on the job when qualified help is available.

(3) On tile or composition shingles one (1) Journeyman and one (1) Indentured Apprentice may be used when qualified help is available.

(4) Class C or Temporary Help shall be used in the same ratio as Indentured Apprentices when qualified help is not available.

E. (1) There shall be at least one (1) Foreman Roofer on each job (not the Working Member), and he shall receive Foreman's pay regardless of size of the crew or job.

(2) One (1) Journeyman alone (including the Working Member of a shop) may do shingling and minor repair work, provided no hot is used.

(3) For ground level slab or foundation work, two (2) men will be required, one (1) of whom may be the Working Member of the shop.

(4) A two (2) man crew, neither of whom shall be the Working Member of the shop, may do work on any job of eight (8) squares or less where hot is used, provided one (1) of these two men if qualified is in attendance at the kettle at all times while it is lighted.

(5) One (1) Journeyman alone, but not the Working Member, may do ground level coating work where no hot is used.

(6) Working Member must abide by all Contract provisions.

(7) For Shower Pan Work one (1) Journeyman not the working member may install the membrane waterproofing as long as he abides by all of the safety regulations outlined in this contract.

ARTICLE XV

Efficiency and Harmony

The CONTRACTORS and the UNIONS recognize the necessity of eliminating restrictions and promoting efficiency and harmony; and they mutually agree that no rules, customs or practices may be permitted that limit production or increase the time required to do productive work; and that no limitation may be placed upon the amount of work that an Employee may perform during the regular working day. Nor shall there be any restrictions against the use of any kind of machinery, tools, or labor-saving devices, or methods; provided, however, that no Employee shall be required to work under any conditions which are injurious to his health or safety.

ARTICLE XVI

Working Conditions—Safety

A. All Employees covered by this Agreement shall have full charge of and handle all materials and operate all equipment used by them on the job. The coating, cleaning

and tearing off and loading of all materials and installation of equipment on the job site or removal thereof; and all other work under the jurisdiction of the UNIONS shall be done by said Employees. The pre-heating of the roofing kettles at the job site shall be done by a Journeyman and the Journeyman shall obtain an early firing permit which shall be issued by the Local Union having jurisdiction in the area.

B. Employees covered by this Agreement shall not work at a weekly or monthly salary.

C. Any Employee covered herein who appears at starting time in an unfit condition to practice his skill or labor, or who, during the work day, provides just cause for his discharge, as defined herein, shall be immediately laid off by the Foreman or other authorized person. If the Foreman appears, or acts, in such a manner, it shall be the duty of the job Steward to keep or order said Foreman away from the job; the matter shall be immediately reported to the Union and Contractor.

D. All wages shall be paid and received not later than quitting time on Friday of each week on the job, except where Employees specifically requests obtaining his check at the shop. The payroll period shall not be more than two (2) days in arrears. All wages shall be paid either in lawful currency or a negotiable check, payable on demand at face value. The check shall have a detachable or separate voucher setting forth wages paid, rate per hour and deductions taken, including hours worked at straight-time and over-time. When wages are paid by check, if said check is not honored, no Employee shall continue in the Employment of the Employer whose check has not been honored; and no Employee shall return to work until all outstanding paychecks have been honored, and the UNIONS shall not supply men until satisfactory arrangements have been made. All payroll checks shall be issued in the name of the signatory Contractor to whom the man was dispatched.

(1) When the Administrator notifies the Union that a Contractor is delinquent in his fringe benefit payments the Union shall remove the Employees from the delinquent shop until satisfactory arrangements are made for payment.

E. When temporary men are laid off or discharged they must be paid wages due them at the time of termination. Failure to make payment at termination, or have same avilable for him at Contractor's office or Union Hall prior to noon the following day or upon request of employee same must be mailed but must be postmarked within 24 hours from time of termination or shall subject contractor to payment of wages at regular rate for the time elapsed to time check is received. When regular Employees are laid off on a temporary basis they are to receive their checks on the next regular pay day.

F. No Employee shall be required to work more than six (6) hours without a meal period, and said meal period shall be one-half (½) hour. In the event of overtime work of more than two (2) hours after quitting time, or two (2) hours before starting time, the Employee shall have a meal period of one-half (½) hour preceding or following his overtime work and that said one-half (½) hour shall be paid at the over time rate.

G. Any Employee who is not laid off, or discharged at or before the cessation of the day's work and reports to the CONTRACTOR'S, Shop or job on the following day, and who is not given work, shall receive two (2) hours pay at the regular rate; provided, however, that such provision shall not apply where the failure of the Employee to be given work is caused by rain, sleet, or other Acts of God, or by strikes; provided, further, that the Employee appears in a physically fit condition for his trade, craft or labor.

H. The Contractor agrees to pay not less than four (4) hours pay at the regular rate to an Employee who is, not regularly on said Contractor's payroll, who has been dispatched by the Union upon request of the Contractor, whether said Employee has worked or not; provided, however, that said lack of work is not caused my rain, sleet or snow, or by other Acts of God, or by strikes. However, when an Employee is dispatched he shall be given wages up to the time of actual work stoppage when due to conditions or acts above mentioned. Any fraction of the hour worked during the regular working day shall

be paid for to the next hour. Overtime shall be paid only for the actual time worked.

I. The Employee shall be paid by the CONTRACTOR at the rate of regular time for any time spent off the job while in attendance in court or before the Industrial Accident Comm. on behalf of the CONTRACTOR or in any Industrial Accident Commission case before the Workman's Compensation Board involving present Employer. When Employees are requested by the Joint Labor Relations Boards to appear as a witness, the Union Roofers Trust Account shall pay the Employees.

J. The parties hereto recognize that a lighted kettle constitutes a safety hazard to persons and property; and, therefore, agree and promise to effect all the safety measures required by law and the customs, rules and standards of the trade or craft; and agree that, the kettle is in operation when the motor of a pumper kettle is running. When same is in operation one (1) Journeyman or qualified apprentice shall service it at all times and be on the same level as the kettle. No Apprentice shall be allowed to work on the kettle until he has been placed in the fourth (4) period of his training and then only for the hours as set on the Apprenticeship Standards. He shall not be assigned to other duties distant therefrom so long as the kettle is not extinguished. In case of emergency other classifications may be used on the kettle and such men shall receive Journeyman's pay. The CONTRACTOR agrees to furnish fire extinguishers as may be required by the proper authority.

K. No kettle shall be in operation on any platform or truck without the approval of the Union. One (1) Journeyman shall service, at all time, any kettle elevated or placed on a platform or truck, and may not leave the platform or truck elevation unless the kettle has been extinguished.

L. The CONTRACTORS agree that they shall not require the Employees hereinto work for any person, firm, corporation, partnership, or joint venture, or any other entity who or which does not have an appropriate State License, Local License, or Municipal License; or who or which does not carry Public Liability Insurance and full

Industrial Compensation Insurance with a company satisfactory to the Joint Labor Relations Boards; and who or which does not comply with the Health and Safety Laws, as well as the Building and Construction Codes of the Local and State Governments.

M. The CONTRACTOR shall file with the Joint Labor Relations Board his License number and copy of his Certificate of Insurance. Further, he shall post in his office and in the cab of all his trucks the name of his Compensation Insurance Carrier.

N. No material of any kind shall be carried up or down any ladder at any time by any Employee or Employer. The CONTRACTORS agree to furnish derricks or hand lines as needed. The CONTRACTORS further agree to maintain the equipment used in compliance with the State Safety Code.

O. The CONTRACTORS agree to take the accepted steps necessary (in accordance with State Health Codes) to protect Employees working coal tar pitch or enameling or protective coating. These steps include supplying of safety goggles, masks for nose, protective cream, etc., all kept in a sanitary condition.

P. No Employee shall be required to tend more than two (2) kettles simultaneously except where asphalt or pitch pumps are used on the job.

Q. Proper sanitary drinking water containers shall be supplied by the Employers on each job site.

R. The CONTRACTORS agree to allow the Business Agent, or Assistant Business Agent of the UNION signatory hereto, to visit and inspect the job site or shop for purposes as provided in this agreement.

S. Time records of Employees may be examined by the Business Agent, or Assistant Business Agent of the UNION, in the presence of the CONTRACTOR involved and a Contractor representative of the Joint Labor Relations Boards, and then only upon authorization of the Joint Labor Relations Boards.

T. On all jobs where mechanical felt laying equipment is used and there are no parapet walls 2 feet high or more, or baracades at the permimeter of the building to

protect the workmen, a header will be installed approximately 6 feet from the outer edges.

ARTICLE XVII

Weight Limitations

No Employee shall hold in suspension while in the act of applying it, a roll of roofing material weighing in excess of 55 #, except 30 # felt in two (2) square rolls.

No bag, package or parcel weighing in excess of 80 # each shall be on roof at any time except bitumen.

ARTICLE XVIII

Standards of Workmanship

A. The Contractor shall furnish Foreman with written instructions covering the work to be performed on each job. A copy of these instructions are to be maintained at all times on the job.

B. Any Employee who fails to comply with the written instructions covering the work on each job shall be considered in violation of the Master Labor Agreement.

C. Any CONTRACTOR, or his Employees, failing to give written instructions to the Foreman on each job, or who knowingly permits or influences the Foreman, or the Employee, to fail to comply with such instructions, shall be considered in violation of the Master Labor Agreement.

D. Any Employee who is instructed or influenced by the CONTRACTOR to violate the written instructions pertaining to each job, or who knows of such violation, must immediately notify the Union and the Business Agent who is assigned to the area in which the CONTRACTOR'S Shop is located; and such Union or Business Agent, upon receipt of notice of the alleged violation shall immediately contact the CONTRACTOR and make every effort to correct the violation.

E. A roof being applied which is below minimum standards as prescribed by the Code in the area of the project shall subject employees to strict disciplinary action by

the Executive Board of the Union and may be the cause of all men working on said project to be removed by the Union.

F. The procedure for establishing guilt or innocence in connection with alleged violations, shall be handled by the Joint Labor Relations Boards as outlined in this Master Labor Agreement for any other disputes or violations.

ARTICLE XIX

Other Than Roofing Contractors

The parties hereto agree that under certain circumstances Employers, (not doing roofing work) other than roofing Contractors as defined in this Agreement, may occasionally require the services of journeyman roofers. It is agreed that such journeymen roofers shall be permitted to work for said Employers who are not roofing Contractors provided that all of the terms and conditions of Article XI of this Agreement are complied with and provided futrher that said Employer is a Union Contractor; maintains a recognized place of business in a properly zoned area and has a telephone listing in said Contractor's name; that said Employer has an applicable State license; and provided further that the work to be done by said journeymen roofers is limited to protective coating work and heating by kettle of bitumens. The parties hereto agree that the provisions of Section A of Article III are hereby waived for the purposes of this section.

This Article excludes holders of A and B1 licenses.

ARTICLE XX

Incorporation of Trust Agreements

To the extent that any provision of any of the following listed Trust Agreements is inconsistent with any provision of this collective bargaining agreement, then the collective bargaining agreement shall prevail.

The following Trust Agreements are incorporated herein and made a part hereof and each Trust Agreement and this Collective Bargaining Agreement are made counterparts of each other and shall be binding on all Contractors employing persons covered by this Agreement.

1. Union Roofers Trust Fund (Health and Welfare) (as amended from time to time) Dated August 15, 1960.

2. Agreement & Declaration of Trust of the Roofers Fund (Vacation) (as amended from time to time) Dated January 31, 1961.

3. The Union Roofers Trust Account (Administration) (as amended from time to time) Dated August 15, 1960.

4. The Union Roofers Apprenticeship & Training Trust Fund (Apprenticeship) (as amended from time to time) Dated August 15, 1960 and including the "Apprenticeship Standards of the Roofing Industry" as adopted by the "Roofers Tri-County Joint Apprenticeship Committee" and the U. S. Department of Labor, Bureau of Apprenticeship & Training and the State of California, Division of Apprenticeship Standards.

(a) The Standard term of apprenticeship shall be three (3) years, the first six (6) months shall be a try-out or probationary period.

(b) Apprentices Wage Schedule. Apprentices shall be paid neither more nor less than the percent of Journeyman's wages as shown in Article XI which shall be the maximum and minimum.

(5) The Roofing Industry Trust (R.I.T.) (as amended from time to time) Dated February 15, 1964.

This Trust shall be administered solely by the designated Trustees, as set forth in the Roofing Industry Trust Agreement, and shall be utilized for the improvement of the industry through such action as, but not limited to, the creation of a Minimum Standard Specification Guide, for the establishment of a Roofing Inspection Bureau, a public relations and advertising program, etc.

6. Each employer making contributions to each of said Funds hereby agrees that by so doing and hereby does irrevocably designate and appoint the employer-designated Trustees mentioned in each of said Trust Agreements as

Trustees authorized to act in his behalf pursuant to said Trust Agreements and irrevocably ratifies the designation, selection, appointment, removal and substitution of Trustees as provided in each of said Trust Agreements.

ARTICLE XXI

Subcontract of Work Covered by this Agreement

If any Roofing Contractor shall subcontract his work, provisions shall be made in such subcontract for the observance by said subcontractor of the terms of this Agreement. The Joint Labor Relations Boards and UNIONS shall be immediately notified in writting of the subcontracting of work by any of the Contractors hereto or any other Contractors.

There shall be no subcontracting of labor. Subcontracting may be done for certain specialty items i.e., spray work or other work not normally done by prime contractors who are subject to this Agreement. Subcontracting under these conditions shall be done by accredited Contractors covered by this Agreement only and subcontractors shall be assigned the starting point of the prime Contractor.

ARTICLE XXII

Saving Clause

A. It is the intent of both parties hereto to abide by all laws, statutes and regulations of every governmental body and authority having jurisdiction over the subject matter of this Agreement. The parties hereto agree that, in the event that any provision or provisions of this Agreement are held or are determined to be illegal or void, or as being in contravention of any law, ruling or regulations, the remainder of this Agreement shall, nonetheless, be and continue to be in full force and effect, unless the invalid or void parts are found to be wholly inseparable from the remaining portion of this Agreement.

B. The conditions and terms of this Agreement shall be subject to adjustments to conform with Federal and State Requirements.

C. The parties hereto further agree that, in the event any provisions of this Contract and Agreement are held to be illegal or void, they will thereupon forthwith enter into negotiations through the Joint Labor Relations Boards concerning the substance thereof.

ARTICLE XXIII

Signature of Parties Affixed

WHEREUNTO we have this day set our hands and seals being this 15th day of August 1963.

CONTRACTORS

ROOFING CONTRACTORS' ASSOCIATION OF SOUTHERN CALIFORNIA, INC.

By: s/ R. James McClain President

By: s/ Robert L. Baier Executive Director

ROOFING CONTRACTORS' ASSOCIATION OF ORANGE COUNTY, INC.

By: s/ Ralph Dion President

By: s/ Marvin H. Warden Secretary

UNION

UNITED SLATE, TILE AND COMPOSITION ROOFERS, DAMP AND WATERPROOF WORKERS ASSOCIATION, LOCALS NO. 36 AND NO. 72 WITHIN THEIR RESPECTIVE JURISDICTIONS.

By: s/ H. P. Bennett
Business Representative Local 36

By: s/ Gale Taylor
Business Representative Local 72

CONTRACTOR

Signed this ..... day of ....., 1963.

Check One

As a member of R. C. A. of So. Calif. Inc. ☐
R. C. A. of Orange Co. Inc. ☐

.....
Contractor or Firm

Print Exactly as Shown on Contractors License
Check whichever applies—Individual ☐—Partnership ☐
Corporation ☐

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Address License No.

By .....
Name Title
Owner or
Principal Officer

By .....
Name Holder of
License

UNION

Local No. ..... By .....

WHEREUNTO we have this day set our hand and seals being this 15th day of August 1963.

JOINT NEGOTIATING COMMITTEE
REPRESENTING

ROOFING CONTRACTORS' ASSOCIATION OF SOUTHERN CALIFORNIA, INC.

ROOFING CONTRACTORS' ASSOCIATION OF ORANGE COUNTY, INC.
AND OTHERS

UNITED SLATE, TILE AND CONSTRUCTION ROOFERS, DAMP AND WATERPROOF WORKERS ASSOCIATION, LOCALS NO. 36 AND NO. 72.

By: s/ Erving P. Friedman Co-Chairman

By: s/ Robert L. Baier

By: s/ Ralph Dion

By: s/ Emery Eberhard

By: s/ Jack Martin

By: s/ Paul Parish

By: s/ Paul Racobs

By: s/ Jack Witt

By: s/ H. P. Bennett Chairman

By: s/ Bill Brode

By: s/ Mike Castro

By: s/ Harold Hannigan

By: s/ Walter F. Nagle

By: s/ Albert Nelson

By: s/ Gale Taylor

By: s/ Robin Wacob

UNION COPY

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By: s/ Gale Taylor
Business Representative Local 72

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	Check One
As a member of R. C. A. of So. Calif. Inc.	☐
R. C. A. of Orange Co. Inc.	☐

.....

Contractor or Firm

Print Exactly as Shown on Contractors License
Check whichever applies—Individual ☐—Partnership ☐
Corporation ☐

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Address License No.

By .....

Name Title
Owner or
Principal Officer

By .....

Name Holder of
License

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Local No. ..... By .....

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Contractor or Firm

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Print Exactly as Shown on Contractors License
Check whichever applies—Individual ☐—Partnership ☐
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Name Title
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By: s/ Robin Wacob

TRUST OFFICE COPY

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R. C. A. of Orange Co. Inc.	☐

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Contractor or Firm

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By: s/ Albert Nelson

By: s/ Gale Taylor

By: s/ Robin Wacob

EMPLOYERS COPY

MEMORANDUM AGREEMENT

It is agreed between the undersigned, hereinafter called Contractor, and Locals Nos. 36 and 72 of the United Slate, Tile and Composition Roofers, Damp and Waterproof Workers Association representing the geographical area of Los Angeles, Ventura and Orange Counties, hereinafter called the "Unions" in consideration of services performed and to be performed by Roofers for the Contractor as follows:

1. The Contractor agrees to comply with all the terms, including wages, hours and working conditions and rules as set forth in the Agreement referred to as the Master Labor Agreement between The Roofing Contractor's Association of Southern California, Inc., The Roofing Contractor's Association of Orange County Inc., and others, and Locals Nos. 36 and 72 of the United Slate, Tile and Composition Roofers, Damp and Waterproof Workers Association dated August 15, 1963 and the Agreement establishing: (1) The Union Roofers Trust Fund dated August 15, 1960; (2) The Union Roofers Trust Account dated August 15, 1960; (3) The Union Roofers Apprenticeship and Training Trust Fund dated August 15, 1960; (4) Agreement & Declaration of Trust of the Roofers Fund (Vacation) dated January 31, 1961; (5) The Roofing Industry Trust effective February 15, 1964, which Trust Agreement will be drawn up and included in this Master Labor Booklet on or before its effective date; and any amendments and modifications, extensions, supplementations and renewals of the Master Labor Agreement and Trust Agreements and any agreements establishing other benefits or plans negotiated by the parties signatory to the Master Labor Agreement. Except as specifically excluded by the Memorandum Agreement, the Master Labor Agreement and Trust Agreements are specifically incorporated by reference and made a part of this Memorandum Agreement.

2. The Contractor agrees to pay to the Union Roofers Trust Fund, the Union Roofers Trust Account, the Union Roofers Apprenticeship & Training Trust Fund, the Agreement and Declaration of Trust of the Roofers Fund

(Vacation), and the Roofing Industry Trust, the sums in the amounts and manner provided for in the Master Labor Agreement and by the rules and procedures adopted by the Trustees of the Trust Funds referred to herein and all amendments, modifications, extensions and renewals thereto.

3. The Contractor agrees that he does irrevocably designate and appoint the Employers mentioned in the Union Roofers Trust Fund, the Union Roofers Trust Account, the Union Roofers Apprenticeship and Training Trust Fund, the Agreement and Declaration of Trust of the Roofers Fund (Vacation), and the Roofers Industry Trust, as his attorneys-in-fact for the selection, removal and substitution of Trustees as provided by or pursuant to the Master Labor Agreement and Trust Agreements.

4. It is agreed that all provisions in the Master Labor Agreement covering or relating to the subjects of strikes, lockouts, jurisdictional disputes shall be excluded from this Memorandum Agreement and shall not be binding upon the Contractor or the Unions. It is agreed that in all cases of a claimed violation, misunderstanding, dispute or difference regarding the application or interpretation of this Memorandum Agreement or the Master Labor Agreement or the Trust Agreements, or any amendments, modifications, extensions, supplementations and renewals thereto, the Unions shall have the right to call or engage or assist in a strike, shutdown, work stoppage or withdrawal of services and the Contractor shall have the right to engage in a lockout.

5. Except as specifically excluded by this Memorandum Agreement, the parties hereto agree to abide by all the terms and conditions of the Master Labor Agreement and Trust Agreements and any amendments, modifications, changes, extensions, supplementations and renewals negotiated by the signatory parties thereto.

6. This Memorandum Agreement shall be binding upon the heirs, executors, administrators, purchasers and assigns of the Contractor and shall be binding upon the Contractor regardless of a change of entity, name or association or joint venture and shall bind any entity or venture who is a principal financially associated with the Contractor.

7. This Memorandum Agreement shall remain in full force and effect until August 14, 1967 and shall continue from year to year thereafter unless either party shall give written notice to the other of a desire to change or cancel it at least 60 days prior to 12:01 A.M. August 15, 1967, or August 15th of any succeeding year. All notices given to the signatory parties to the Master Labor Agreement by the Unions shall constitute sufficient notice to the Contractor for the purpose of this paragraph. The Contractor and the Union shall be bound by any renewals or extensions of the Master Labor Agreement and Trust Agreements, or any new agreements, unless an appropriate written notice is given to the other party at least 60 days prior to August 15, 1967 or any subsequent year of their intent not to be bound by any new, renewed or extended agreement.

Signed this ..... day of ....., 1963.

UNITED SLATE, TILE AND COMPOSITION ROOFERS, DAMP AND WATERPROOF WORKERS ASSOTION

By .....

Local Union No. .....

and

By .....
Name Title

.....

.....
Contractor or Firm

(Printed exactly as listed with State License Board)

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Address License No.

UNION COPY

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By .....

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MEMORANDUM AGREEMENT

It is agreed between the undersigned, hereinafter called Contractor, and Locals Nos. 36 and 72 of the United Slate, Tile and Composition Roofers, Damp and Waterproof Workers Association representing the geographical area of Los Angeles, Ventura and Orange Counties, hereinafter called the "Unions" in consideration of services performed and to be performed by Roofers for the Contractor as follows:

1. The Contractor agrees to comply with all the terms, including wages, hours and working conditions and rules as set forth in the Agreement referred to as the Master Labor Agreement between The Roofing Contractor's Association of Southern California, Inc., The Roofing Contractor's Association of Orange County Inc., and others, and Locals Nos. 36 and 72 of the United Slate, Tile and Composition Roofers, Damp and Waterproof Workers Association dated August 15, 1963 and the Agreement establishing: (1) The Union Roofers Trust Fund dated August 15, 1960; (2) The Union Roofers Trust Account dated August 15, 1960; (3) The Union Roofers Apprenticeship and Training Trust Fund dated August 15, 1960; (4) Agreement & Declaration of Trust of the Roofers Fund (Vacation) dated January 31, 1961; (5) The Roofing Industry Trust effective February 15, 1964, which Trust Agreement will be drawn up and included in this Master Labor Booklet on or before its effective date; and any amendments and modifications, extensions, supplementations and renewals of the Master Labor Agreement and Trust Agreements and any agreements establishing other benefits or plans negotiated by the parties signatory to the Master Labor Agreement. Except as specifically excluded by the Memorandum Agreement, the Master Labor Agreement and Trust Agreements are specifically incorporated by reference and made a part of this Memorandum Agreement.

2. The Contractor agrees to pay to the Union Roofers Trust Fund, the Union Roofers Trust Account, the Union Roofers Apprenticeship & Training Trust Fund, the Agreement and Declaration of Trust of the Roofers Fund

(Vacation), and the Roofing Industry Trust, the sums in the amounts and manner provided for in the Master Labor Agreement and by the rules and procedures adopted by the Trustees of the Trust Funds referred to herein and all amendments, modifications, extensions and renewals thereto.

3. The Contractor agrees that he does irrevocably designate and appoint the Employers mentioned in the Union Roofers Trust Fund, the Union Roofers Trust Account, the Union Roofers Apprenticeship and Training Trust Fund, the Agreement and Declaration of Trust of the Roofers Fund (Vacation), and the Roofers Industry Trust, as his attorneys-in-fact for the selection, removal and substitution of Trustees as provided by or pursuant to the Master Labor Agreement and Trust Agreements.

4. It is agreed that all provisions in the Master Labor Agreement covering or relating to the subjects of strikes, lockouts, jurisdictional disputes shall be excluded from this Memorandum Agreement and shall not be binding upon the Contractor or the Unions. It is agreed that in all cases of a claimed violation, misunderstanding, dispute or difference regarding the application or interpretation of this Memorandum Agreement or the Master Labor Agreement or the Trust Agreements, or any amendments, modifications, extensions, supplementations and renewals thereto, the Unions shall have the right to call or engage or assist in a strike, shutdown, work stoppage or withdrawal of services and the Contractor shall have the right to engage in a lockout.

5. Except as specifically excluded by this Memorandum Agreement, the parties hereto agree to abide by all the terms and conditions of the Master Labor Agreement and Trust Agreements and any amendments, modifications, changes, extensions, supplementations and renewals negotiated by the signatory parties thereto.

6. This Memorandum Agreement shall be binding upon the heirs, executors, administrators, purchasers and assigns of the Contractor and shall be binding upon the Contractor regardless of a change of entity, name or association or joint venture and shall bind any entity or venture who is a principal financially associated with the Contractor.

7. This Memorandum Agreement shall remain in full force and effect until August 14, 1967 and shall continue from year to year thereafter unless either party shall give written notice to the other of a desire to change or cancel it at least 60 days prior to 12:01 A.M. August 15, 1967, or August 15th of any succeeding year. All notices given to the signatory parties to the Master Labor Agreement by the Unions shall constitute sufficient notice to the Contractor for the purpose of this paragraph. The Contractor and the Union shall be bound by any renewals or extensions of the Master Labor Agreement and Trust Agreements, or any new agreements, unless an appropriate written notice is given to the other party at least 60 days prior to August 15, 1967 or any subsequent year of their intent not to be bound by any new, renewed or extended agreement.

Signed this ..... day of ....., 1963.

UNITED SLATE, TILE AND COMPOSITION ROOFERS, DAMP AND WATERPROOF WORKERS ASSOTION

By .....

Local Union No. .....

and

By .....
Name Title

.....

.....
Contractor or Firm

(Printed exactly as listed with State License Board)

....
Address License No.

EMPLOYERS COPY

TERMINATION—ARTICLE IX

Page 25—Master Agreement Ending 8-15-63
R-3

August 20, 1963

Joint Labor Relations Board, of,
Union Roofing Contractors, and
Roofers' Locals Number 36 and 72.

Gentlemen:

Persuant of that Article in the Master Agreement dated August 15, 1963; to and including August 15, 1967; pertaining to the termination of the Master Contract, I, J. T. Strong d.b.a. as the Strong Roofing & Insulation Company, located at 710 South Garfield Avenue, Alhambra; request action in accordance with the above noted Article in the current Master agreement.

Date of termination to be set at next regular meeting of the J.L.R.B., who shall release deposit of $400.00 held as guarantee of faithful performance regarding labor payments as so described in Master Agreement.

Sincerely,

J. T. STRONG

UNITED STATES OF AMERICA

BEFORE THE
NATIONAL LABOR RELATIONS BOARD

Case No. 21-CA-5978

JOSEPH T. STRONG d/b/a STRONG ROOFING & INSULATING CO.

and

ROOFERS LOCAL 36, UNITED SLATE, TILE AND COMPOSITION ROOFERS, DAMP AND WATERPROOF WORKERS ASSOCIATION

DECISION AND ORDER

On January 8, 1965, Trial Examiner Martin S. Bennett issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices within the meaning of the Act, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the Trial Examiner's Decision attached hereto. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision and a supporting brief. The General Counsel filed a brief in support of the Trial Examiner's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

Pursuant to Section 10(c) of the Natnonal Labor Relations Act, as amended, the Board hereby adopts as its Order, the Order recommended by the Trial Examiner and orders that Respondent, Strong Roofing & Insulating Co., its agents, successors, and assigns, shall take the ac-

tion set forth in the Trial Examiner's Recommended Order.

Dated, Washington, D. C.

JOHN H. FANNING, Member

GERALD A. BROWN, Member

HOWARD JENKINS, JR., *Member*

National Labor Relations Board

[SEAL]

UNITED STATES OF AMERICA

BEFORE THE
NATIONAL LABOR RELATIONS BOARD
DIVISION OF TRIAL EXAMINERS
BRANCH OFFICE
SAN FRANCISCO, CALIFORNIA

Case No. 21-CA-5978

JOSEPH T. STRONG d/b/a STRONG ROOFING & INSULATING CO.

and

ROOFERS LOCAL 36, UNITED SLATE, TILE AND COMPOSITION ROOFERS, DAMP AND WATERPROOF WORKERS ASSOCIATION

Harold E. Jahn, for the General Counsel.

O'Melveny & Myers, by *Alfred C. Phillips*, of Los Angeles, Calif., for Respondent.

Eugene Miller, of Los Angeles, Calif., for the Union.

Before: *Martin S. Bennett*, Trial Examiner.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

This matter was heard at Los Angeles, California, on October 20, 1964. The complaint [1] alleges that Respondent, Joseph T. Strong d/b/a Strong Roofing & Insulating Co., had engaged in unfair labor practices within the meaning of Section 8(a)(5) and 8(a)(1) of the Act. Oral argument was waived and briefs have been submitted by the General Counsel and Respondent.

Upon the entire record in the case, and from my observation of the witnesses, I make the following:

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[1] Issued August 19, and based upon a charge filed June 8, 1964, by Roofers Local 36, United Slate, Tile and Composition Roofer, Damp and Waterproof Workers Association, herein called the Union.

FINDINGS OF FACT

I. Jurisdictional findings

Joseph T. Strong, an individual proprietor doing business under the trade name and style of Strong Roofing & Insulating Co., is engaged in the roofing of residential and commercial buildings. This concern annually purchases supplies valued at less than $50,000.

Since approximately 1949, but not after September of 1964, Respondent was a member of Roofing Contractors' Association of Southern California, Inc., herein called the Association. The latter is an association of roofing contractors in Southern California which negotiates collective bargaining agreements in behalf of its members with the charging Union and its sister Local 72. At least one of the members of this Association annually performs services vaued in excess of $50,000 outside the State of California.

Finding hereinafter that Respondent was a member of this Association at the time material herein, I further find that the operations of Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act that it would effectuate the purposes of the Act to assert jurisdiction herein. *N.L.R.B.* v. *Miscellaneous General Drivers, Local 610*, 293 F. 2d 437 (C.A. 8), and *Insulation Contractors of Southern California, Inc.*, IIC NLRB 638.

II. The labor organization involved

Roofers Local 36, United Slate, Tile and Composition Roofers, Damp and Waterproof Workers Association is a labor organization within the meaning of Section 2(5) of the Act.

III. The unfair labor practices

A. *The issue; introduction*

A contract between the Association, in behalf of its members, and the Union was in effect from August 15, 1960, to August 14, 1963. Negotiations on a successor contract commenced in March of 1963 and an agreement

was arrived at on August 14, 1963, for the period from August 15, 1963, through August 15, 1967. Both contracts provided for year to year renewal after the stated term, absent a 60-day notice prior to the end of said term or any subsequent yearly period.

Respondent has refused to sign and honor the 1963-1967 agreement, claiming that it withdrew from the multi-employer bargaining unit and, further, that the Union consented to this withdrawal. The General Counsel alleges that Respondent's attempted withdrawal took place at an inappropriate time and urges, contrary to Respondent, that the Union never waived its rights herein; he contends that a refusal to bargain took place on and after June 2, 1964.[2]

It may be noted that the Association has 85 "regular" members who operate unionized shops in behalf of whom, as stated, it has for many years negotiated an association-wide contract. Since June of 1962, it has recognized a new category of associate contractor members, some 10 or 11 in number; these operate non-union shops and are not covered by the contract. Treated with hereinafter is Respondent's change of its membership from a regular to an associate contractor membership, as well as its resignation from the Association, and the effect of these moves upon Respondent's coverage by the contract.

B. *Appropriate unit and majority representation therein*

The General Counsel contends that all roofers employed by [regular] members of the Association constitute a unit

[2] The complaint refers to prior conduct which was fully litigated herein. Respondent has contended that the six-month statute of limitations established by Section 10(b) bars the complaint, and relies upon the Union's first demand in October, 1963, described below, that the Respondent sign the Association contract; the evidence, however, goes beyond and treats with Respondent's subsequent refusals to honor the contract. More particularly, aside from a meeting in December of 1963, there is evidence that a union representative met with Respondent in April of 1964, the date the General Counsel presumably had in mind, and the charge was filed on June 3, 1964. Consequently, the rationale of *Local Lodge No. 1424, I.A.M.* v. *N.L.R.B. (Bryan)*, 362 U.S. 411, is deemed not to be in point. See *Local Union No. 269, I.B.E.W.*, 149 NLRB No. 74.

appropriate for the purposes of collective bargaining. This is an association-wide unit of the type regularly recognized by the Board and I find it is an appropriate unit within the meaning of Section 9(b) of the Act.

The General Counsel further contends that at all times since August 15, 1963, the effective date of the most recent agreement, the Union has been the representative of a majority of the employees in the above-described unit, including those of Respondent. Respondent does not dispute the Union's representative status among the other members of the Association, but again predicates its denial of said representative status among the employees of Respondent upon its attempted withdrawal from the unit. For reasons hereinafter set forth, I find that the Union has been at all times material herein, and now is, the exclusive representative of all employees in said unit within the meaning of Section 9(a) of the Act.

C. *Sequence of events*

As set forth, a contract between the Association and the Union was in effect from August 15, 1960, through August 14, 1963. Respondent, as a regular member of the Association, was bound by this contract and adhered to its terms. Indeed, consistent with custom whereby the Union obtained signed copies of the contracts from the respective members of the Association, Joseph Strong had signed the 1960 contract.[3] On January 23, 1962, Respondent wrote to the Union, as follows:

> Persuant (sic) to Article IX, paragraph A, and B, in the Master Labor Agreement dated August 15, 1960 to August 14, 1963, inclusive, I, J. T. Strong dba as sole proprietor of the Strong Roofing and Insulating Company located at 710 South Garfield Avenue, Alhambra, do hereby respectfully request termination of the above Master Labor Agreement.
>
> Date of termination to be soon as possible under the terms of the Agreement.

[3] All regular members of the Association give it the right to bargain for them; agree under the By-Laws not to engage in individual bargaining; and agree to accept the negotiated contract.

> Request this intent of termination to be brought to the attention at the next regular meeting of the Joint Labor Relations Board, at their February 6, 1962, meeting.

Strong testified that he believed that this clause, as well as an identical clause in the 1963-1967 contract, permitted him to terminate the contract on 60 days' notice. However, it is quite clear that the clause in both contracts does not so provide. It establishes a term from August 15, 1960, through August 14, 1963, and from year to year thereafter, absent 60 days' notice prior to August 14, 1963, or the end of any subsequent yearly period to terminate or modify the contract. Furthermore, Strong never received a reply to this letter, which was sent via regular mail and there is no direct evidence of its receipt by the Union. Respondent continued to live up to the terms of the agreement in all respects, including payment of fringe benefits.

Negotiations for a successor contract covered the period from March 1963, through August 14, 1963. A new contract was reached on August 14, for a term from August 15, 1963, through August 15, 1967.

There is evidence by Executive Director David Van Eyk of the Association that all members of the Association were kept posted as to the progress of the 1963 negotiations. Two open negotiating meetings were held on May 21 and July 13, 1963, and all regular members were invited to attend. And, on July 27, each regular member was mailed a document reflecting all contract matters that had been agreed upon as of that date. Moreover, on September 24, 1963, Respondent made fringe payments to the "Union Roofers Trust Account" for the month ending August 31 as required by the Asociation's contract with the Union. And, on October 19, 1963, a similar payment was made for the month ending September 25, 1963.

On August 20, 1963, Respondent wrote to the Joint Labar Relations Board. This is a Board set up under the grievance procedure of the contracts, composed equally of contractor and union representatives, to handle grievances or disputes under the contracts. The letter was referred to the Association, and no issue is raised by the General

Counsel as to whether it was sent to the proper party.[4] In the letter, Strong stated:

> Persuant (sic) of that Artle (sic) in the Master Agreement dated August 15, 1963; to and including August 15, 1967; pertaining to the termination of the Master Contract, I, J. T. Strong d.b.a. as the Strong Roofing & Insulation Company, located at 710 South Garfield Avenue, Alhambra; request action in accordance with the above noted Article in the current Master Aggrement (sic).
>
> Date of termination to be set at next regular meeting of the J.L.R.B., who shall release depost (sic) of $400.00 held as guarantee of faithful performance regarding labor payments as so described in Master Agreement.

Here as well, it is apparent that Strong believed that the language he referred to provided for a 60-day notice pursuant to which he could be released from the provisions of the contract. The reference to the $400 bond is to a bond required of the regular members of the Association under the Master Labor Contract to insure payment of wages and fringe benefits. Strong also testified that he had made the fringe benefit payments in September and October, described above, pursuant to his concept of honoring the contract for its last 60 days.

About the end of September, according to Van Eyk, Strong telephoned the Association and asked that his status as a regular member [under the contract] be changed to that of an associate contractor member [non-union]; this meant a reduction from $17.25 to $15.00 per month in dues. Respondent continued to pay the higher sum on or about the first of the months of October, November and December of 1963. On December 18, the Association reduced the amount of the payment to $15 per month and placed a credit of $6.75 to Respondent on its books; this reflected a credit of $2.25 for each of the months of October, November and December. I find that the status of

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[4] This registered letter was not delivered until August 27.

Respondent was changed to that of an associate contractor member on December 18, retroactive to October 1, 1963.

On September 30, 1963, the Association cancelled Respondent's bond and on January 3, 1964, the cash deposit of $400 was returned to him. The record further discloses that in September of 1964, Respondent withdrew from the Association.

There have been three contacts of Respondent by representatives of the Union subsequent to the signing of the contract on August 14, 1963. On October 18 or 20, 1963, according to Mrs. Joseph Strong who handles administrative details for Respondent, one Sheridan, a representative of the Union, called at the office and stated that the Union wished Respondent to sign a copy of the newly-negotiated agreement. As noted, this had been routine practice for many years. Mrs. Strong refused to sign, stating that her husband had previously notified the Association of his intent not to re-sign, manifestly a reference to the letter of August 20, 1963. Mrs. Strong reaffirmed this position in a telephone conversation with Sheridan on the following day.

Sheridan again visited Respondent's office on December 10, 1963, and, according to Mrs. Strong, renewed his request that Respondent sign the contract. Mrs. Strong refused, stating that she no longer had any "union men" and claiming that several [if not all] of her employees had withdrawn from the Union and were going into business for themselves.

In April of 1964, William Nuttall, a representative of the Union, called upon Strong and asked him to sign the contract. Strong refused, referred to the number of non-union contractors in the area and stated, according to Nuttall, that "he would rather go non-union rather than sign it . . ." Strong admitted refusing to sign the contract "for economic reasons."

D. *Analysis and conclusions*

The Board recognizes that employer members of a multi-employer bargaining unit may withdraw from multi-employer bargaining. See, e.g. *Seattle Automotive Wholesalers Association*, 140 NLRB 1393. But a basic requisite

has been that an employer do so unequivocally and at an appropriate time. And the Board has made it clear that an attempt at withdrawal *after* a multi-employer agreement has been reached is ineffective because the time has become inappropriate. See, e.g., *N.L.R.B.* v. *Jeffries Bank Note Co.*, 281 F. 2d 893 (C.A. 9); *Fairbanks Dairy*, 146 NLRB No. 111; *Cooke & Jones, Inc.*, 146 NLRB No. 192; *Walker Electric Co.*, 142 NLRB 1214; and *Donaldson Sales, Inc.*, 141 NLRB 1303.

In the instant case, Respondent's letter of January 23, 1962, manifestly had no legal effect because the contract did not expire until August 14, 1963, and it did not provide for a prior termination. And, in 1963, while negotiations were going on for a new contract, Respondent was put on notice thereof but took no steps to withdraw from the Association. Indeed, it proceeded to honor the new contract and lived up to its fringe benefit requirements for the months of August and September of 1963.

Respondent has argued that in the three contracts with it by the Union, described above, the union representatives merely asked Respondent to sign the agreement and did not state that Respondent was bound by the Association-wide master contract. But it is clear that Respondent, and the record discloses that Strong was a past president of the Association presumably familiar with its procedures, was asked, on these occasions, to sign an individual contract after the master agreement had been negotiated precisely as it had been in the past; the other regular members of the association were also so asked. Stated otherwise, the Association-wide contract was negotiated in 1963, and the members of the Association were thereafter respectively asked to sign individual copies, just as had been done in the past. This is not evidence of a waiver and Respondent's contention to that effect is rejected.

While Respondent changed its membership to that of associate contractor member, after the signing of the 1963 contract; reclaimed its bond; and, in 1964, withdrew from the Association, I fail to see how this helps it, all these occurring too late in the day.

And while Respondent draws attention to the fact that, when negotiations commenced on new contracts, the Asso-

ciation was in the habit of sending proxies to regular members as well as to non-members, the record demonstrates that there was no requirement that regular members sign and return the proxies, and in fact some did not. Indeed, Strong admittedly did not sign all such proxies and did not recall whether he signed one in 1960, despite the fact that he lived up to the 1960 contract.

I find, in view of the foregoing considerations, that, on and after April of 1964, Respondent, by failing and refusing to sign and honor the agreement negotiated by the Association with the Union covering the period from August 15, 1963, through August 15, 1967, has refused to bargain and has engaged in unfair labor practices within the meaning of Section 8(a)(5) and Section 8(a)(1) of the Act. See *Mixermobile Manufacturers, Inc.*, 149 NLRB No. 60; *Ogle Protection Service, Inc.*, 149 NLRB No. 50 and *Tulsa Sheet Metal Works, Inc.*, 149 NLRB No. 120.

IV. The effect of the unfair labor practices upon commerce

The activities of Respondent, set forth in Section III and occurring in connection with its operations described in Section I, above, have a close, intimate and substantial relationship to trade, traffic and commerce among the Several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The remedy

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act.

It has been found that Respondent has refused to bargain with the Union as the duly designated representative of its employees in an appropriate unit. I shall therefore recommend that Respondent sign and honor the agreement negotiated between the Association and the Union covering the period from August 15, 1963, through August 15, 1967, and that it pay to the appropriate source any fringe benefits provided for therein.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, I make the following:

CONCLUSIONS OF LAW

1. Joseph T. Strong d/b/a Strong Roofing & Insulating Co. is an employer within the meaning of Section 2(2) of the Act.

2. Roofers Local 36, United Slate, Tile and Composition Roofers, Damp and Waterproof Workers Association is a labor organization within the meaning of Section 2(5) of the Act.

3. All roofers employed by members of the Roofing Contractors' Association of Southern California, Inc., including Respondent, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Roofers Local 36, United Slate, Tile and Composition Roofers, Damp and Waterproof Workers Association has been at all times since August 15, 1963, and now is, the exclusive representative of all employees in the aforesaid appropriate unit within the meaning of Section 9(a) of the Act.

5. By refusing on and after April, 1964, to bargain in good faith with the Union as the exclusive representative of its employees in the aforesaid appropriate unit, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the foregoing conduct, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, it is recommended that Respondent, Joseph T. Strong d/b/a Strong Roofing & Insulating Co., Alhambra, California, his agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to recognize Roofers Local 36, United Slate, Tile and Composition Roofers, Damp and Waterproof Workers Association as the representative of its employees in the above-described appropriate unit and refusing to honor the 1963-1967 contract between said Union and Roofing Contractors' Association of Southern California, Inc.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the above-named or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Forthwith execute and honor the 1963-1967 agreement between the Union and Roofing Contractors' Association of Southern California.

(b) Pay to the appropriate source any fringe benefits provided for in the above-described contract.

(c) Post at its offices at Alhambra, California, copies of the notice attached hereto and marked Appendix.[5] Copies of said notice, to be furnished by the Regional Director for the Twenty-first Region, shall, after being duly signed by Respondent, be posted immediately upon receipt thereof and maintained by it for a period of 60 consecutive days thereafter in conspicuous places, including

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[5] In the event that this Recommended Order be adopted by the Board, the words "A DECISION AND ORDER" shall be substituted for the words "THE RECOMMENDATIONS OF A TRIAL EXAMINER" in the notice. In the further event that the Board's Order be enforced by a decree of a United States Court of Appeals, the words "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER" shall be substituted for the words "A DECISION AND ORDER."

all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for the Twenty-first Region, in writing, within 20 days from the date of the receipt of this Decision and Recommended Order what steps it has taken to comply herewith.[6]

Dated:

/s/ Martin S. Bennett
MARTIN S. BENNETT
Trial Examiner

[6] In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify said Regional Director in writing within 10 days from the date of this Order what steps the Respondent has taken to comply herewith."

NOTICE TO ALL EMPLOYEES

PURSUANT TO THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended we hereby notify you that:

WE WILL NOT refuse to recognize ROOFERS LOCAL 36, UNITED SLATE, TILE AND COMPOSITION ROOFERS, DAMP AND WATERPROOF WORKERS ASSOCIATION as the representative of our roofing employees.

WE WILL honor and sign the contract executed between ROOFING CONTRACTORS' ASSOCIATION OF SOUTHERN CALIFORNIA, INC. and ROOFERS LOCAL 36, UNITED SLATE, TILE AND COMPOSITION ROOFERS, DAMP AND WATERPROOF WORKERS ASSOCIATION for the period August 15, 1963, through August 15, 1967, covering a unit of all roofers employed by members of said Association.

WE WILL make whole the appropriate sources for any unpaid fringe benefits provided in the above contract.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the above-named or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all such activities, except to the extent that such right may be affected by an agree-

ment requiring membership in a labor organization as a condition of employment.

JOSEPH T. STRONG d/b/a
STRONG ROOFING &
INSULATING CO.
(Employer)

Dated _____ By _____
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 849 South Broadway, Los Angeles, California (Telephone No. 688-5204), if they have any question concerning this notice or compliance with its provisions.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 20,762

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

JOSEPH T. STRONG, d/b/a STRONG ROOFING & INSULATING CO., RESPONDENT

[July 14, 1967]

On Petition for Enforcement of an Order of the National Labor Relations Board

Before: HAMLEY and JERTBERG, Circuit Judges, and WHELAN, District Judge.

WHELAN, District Judge:

This case is before the Court on the petition of the National Labor Relations Board to enforce its order against Respondent Joseph T. Strong d/b/a Strong Roofing and Insulating Co.

The Board's decision and order are reported at 152 N.L.R.B. No. 2. This Court has jurisdiction of the matter.

The Board found that respondent, by refusing to sign and honor a collective bargaining agreement negotiated on behalf of respondent by a multi-employer association to which respondent belonged and through which respondent participated with the Union, has refused to bargain and has engaged in unfair labor practices within the meaning of Section 8(a)(5) and Section 8(a)(1) of the National Labor Relations Act, as amended, 29 U.S.C. 158(a)(5) and 158(a)(1).

Respondent was ordered by the Board to cease and desist from refusing to recognize the Union as the representative of respondent's employees in the multi-employer bargaining unit and refusing to honor the 1963-1967 contract between the Union and the Association and from, in any like or related manner, interfering with, restrain-

ing or coercing his employees in the exercise of their statutory rights. Respondent was also ordered to forthwith execute and honor the 1963-1967 contract and to pay to the appropriate source any fringe benefits provided for in the above described contract, as well as to post the usual notice and give notification of the posting of the notice to the representative of the Board within the time provided in the order.

While before the Board respondent contended that the Board did not have jurisdiction to hear the complaint against respondent in that respondent was not engaged in a business affecting commerce within the meaning of Sections 2(6) and 2(7) of the National Labor Relations Act, as amended, and has not engaged in conduct affecting commerce over which the Board has jurisdiction under Section 10(a) of said Act, the respondent has abandoned such contention before this Court.[1]

Resisting the petition for enforcement, respondent first argues that the unfair labor practice charge was filed more than six months following respondent's refusal to execute the multi-employer contract.

The unfair labor practice charge was filed on June 3, 1964. On October 18, 1963, the Union representative contacted respondent's wife who managed the office of respondent in an attempt to have the 1963-1967 multi-employer contract with the Union signed. Respondent's wife told the representative that respondent had withdrawn from the Association and therefore would not sign. The following day she told the Union representative that she had spoken to respondent, who had confirmed his intent to withdraw from the Association, and that he therefore would not sign the agreement. Again on December 10, 1963, respondent's wife said respondent would not sign the contract because he no longer employed any Union members. Finally in April 1964 respondent was again contacted by a Union representative, at which time respondent refused to sign the contract for "economic reasons."

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[1] In any event, the Board found that the operations of respondent do affect commerce within the meaning of said Sections 2(6) and 2(7) of the Act; and such finding is supported by substantial evidence and such finding is correct.

While it is true that the first refusal to sign the contract in October 1963 was barred as the basis of an unfair labor practice charge by Section 10(b) of the Act as being more than six months prior to the date of the filing of the unfair labor practice charge, and while it is true that had nothing further occurred thereafter respondent's contention would be well taken, here there were further refusals within a period of six months prior to the date of filing of the charge.

The obligation of respondent to bargain collectively with the Union was a continuing one. *N.L.R.B.* v. *White Construction Co.*, 204 F.2d 950, 952-953, (5th Cir. 1953) 204 F.2d 950, 953. Respondent had the obligation to bargain collectively and to execute the contract when the Union requested him so to do. Section 8(d) of the Act, Title 29, U.S.C., 158(d). This obligation extends to the execution of a bargaining agreement executed by an employers Association of which an employer is a member with the Union. *N.L.R.B.* v. *Jeffries Banknote Co.*, (9th Cir. 1960) 281 F.2d 893, 896.

Respondent's reliance on *Local 1424, I.A.M.* v. *N.L.R.B.*, 362 U.S. 411, is without merit. In *Local 1424, supra*, the Supreme Court said at 362 U.S. pp. 416-417:

> "[I]n applying rules of evidence as to the admissibility of past events, due regard for the purposes of Section 10(b) requires that two different kinds of situations be distinguished. The first is one where occurrences within the six month limitations period in and of themselves may constitute, as a substantive matter, unfair labor practices. There, earlier events may be utilized to shed light on the true character of matters occurring within the limitations period; and for that purpose Section 10(b) ordinarily does not bar such evidentiary use of anterior events. The second situation is that where conduct occurring within the limitations period can be charged to be an unfair labor practice only through reliance on an earlier unfair labor practice. There the use of earlier unfair labor practices is not merely 'evidentiary' since it does not simply lay bare a putative current unfair labor practice. Rather, it serves to cloak with illegality that which was otherwise lawful."

In the instant case each of the two refusals of respondent to sign the contract within the six month limitation period in and of itself constitutes, as a substantive matter, unfair labor practice. Therefore, the Board was entitled to consider the refusal of respondent in October 1963 to sign the contract as evidence to shed light on the true character of the refusals occurring within the limitation period. *International Union, United Automobile, etc. Workers of America, AFL-CIO* v. *N.L.R.B.*, (D.C. Cir. 1966) 363 F.2d 706-707.

Respondent next argues that the Union was estopped by its conduct during the period commencing August 1963 and ending June 3, 1964, from contending that it did not consent to the respondent's withdrawal from the multi-employer unit and release from the obligations of the multi-employer contract.

The examiner's findings concerning the question of estoppel, adopted by the Board, may be summarized briefly as follows:

Respondent is an individual engaged in the roofing of residential and commercial buildings. He joined the Roofing Contractors Association of Southern California, Inc. (hereafter the Association) about 1949 and at one time served as its president. He had for many years been a regular member as defined in the Association's by-laws.

The Association was formed for the purpose, inter alia, of negotiating labor contracts with Roofers Local 36, United Slate, Tile and Composition Roofers, Damp and Waterproof Workers Association (hereafter Union). By-laws of the Association provide for regular members and also for associate contractor members. Regular members are contractors who operate union shops and who, under the by-laws of the Association, are bound by the collective bargaining contract negotiated by the Association. Associate contractor members are contractors who operate non-union shops and who are not covered by the Association's collective bargaining agreement.

As a regular member of the Association, respondent signed the August 15, 1960, to August 14, 1963, agreement with the Union and the Association. During such contract term and on January 23, 1962, respondent wrote

the Union requesting termination of the contract at the earliest possible time. He received no response to such letter. There is no evidence that such letter was ever transmitted to the Association. However, under the terms of such contract, respondent could not terminate such agreement as such contract was for a fixed period. Despite his letter he continued to observe the contract and paid fringe benefits to the Union Roofers Trust Account.

Prior to the start of contract negotiations with the Union in March of 1963, the Association mailed authorization proxies to its regular members, including respondent, for their information only. Whether or not the regular members sign proxies they are bound by any agreement reached in the negotiations. Respondent neither signed nor returned the proxy; respondent testified that in the past he had not always signed the proxies. The negotiations between the Union and Association continued until August 14, 1963, when the terms of a new four-year contract were agreed upon; the contract was ratified by the Union membership on August 17, 1963, and had an effective date of August 15, 1963. During the negotiations the Association informed all regular members, including respondent, of progress and invited them to attend two open negotiating sessions.

Respondent did not notify the Association that he was withdrawing as a regular member of the Association prior to the execution of the 1963-1967 contract.

Though regular members are automatically bound by the negotiated collective bargaining agreement, it has been the past practice of the Union to have each of the members sign a copy of the contract.

On August 20, 1963, respondent wrote the Joint Labor Relations Board, a grievance board composed of contractor and Union representatives, requesting termination of the contract and the refund of his security deposit pursuant to the Master Agreement dated August 15, 1963. Upon receipt of this letter the Joint Labor Relations Board, without further action, turned it over to the Association's representative.

In September 1963 respondent telephoned the Association and requested that his status be changed from that of

a regular member to that of an associate contractor member, but he paid the higher regular member dues in October, November, and December of 1963 and paid fringe benefits to the Union Roofers Trust Fund in September and October of 1963. Under the terms of the 1963-1967 contract, respondent could not unilaterally terminate the contract.

In December 1963 the Association credited his account with the difference between the regular and associate membership dues for October, November, and December of that year, and in January 1964 returned to him his deposit given as security to the Association to insure payment of wages and fringe benefits by him. Prior to the return of the deposit by the Association, he had not received an answer to his August 20, 1963, letter to the Joint Labor Relations Board requesting termination of the contract.

In the three contacts of respondent by the Union in October and December of 1963, and in April of 1964, the Union representatives merely asked respondent to sign the agreement and did not state that respondent was bound by the Association-wide master contract. What did occur on those three occasions was the request by the Union representatives that respondent sign an individual contract after the master agreement had been negotiated precisely as respondent had been requested with respect to earlier contracts so to sign and as other regular members of the Association were requested both with respect to the 1963-1967 contract and earlier contracts.

The trial examiner found that the failure of the Union representatives to tell respondent that he was bound by the master contract was not evidence of a waiver and the Board adopted such finding.

The reviewing power of this Court over orders of the Board is set forth in Section 10(f) of the Act, which states:

> "[T]he findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive."

The standard of review set forth in that provision is elaborated upon in *Universal Camera Corp.* v. *N.L.R.B.*, 340 U.S. 464 (1951) and its companion case, *N.L.R.B.* v. *Pittsburgh S.S. Company*, 340 U.S. 498 (1951). If the findings are not supported by substantial evidence on the record when considered as a whole, it is our duty to set aside and refuse enforcement of the order of the Board. *Universal Camera Corp.* v. *N.L.R.B.*, *supra*; *N.L.R.B.* v. *Isis Plumbing and Heating Co.*, 322 F.2d 913 (9th Cir. 1963); *Lozano Enterprises* v. *N.L.R.B.*, 357 F.2d 509 (9th Cir. 1966).

Under the rationale expressed in *Universal Camera*, *supra*, it is our duty in determining the substantiality of evidence supporting a Labor Board decision to take into account contradictory evidence or evidence from which conflicting inferences could be drawn.

> "The substantiality of evidence must take into account whatever in the record fairly detracts from its weight." *Universal Camera*, *supra*, at 847.

We do not find the inferences drawn from the record by the trial examiner to be unreasonable.

In our view the findings of the Board are supported by substantial evidence in the record considered as a whole, and are therefore conclusive upon us.

However, respondent's contention that the Board erred in including in its order a requirement that respondent pay to the appropriate source any fringe benefits provided for in the contract between the Association and the Union is well taken. In general, the Board has no power to adjudicate contractual disputes. *N.L.R.B.* v. *Hyde*, (9th Cir. 1964) 339 F.2d 568, 572; *United Steel Workers of America, AFL-CIO* v. *American International Aluminum Corp.*, (5th Cir.) 334 F.2d 147, 152. Here the unfair labor practice was the refusal to bargain by refusing to execute the contract. The order of the Board requiring the payment of fringe benefits to the appropriate source is an order to respondent to carry out provisions of the contract and is beyond the power of the Board. See *N.L.R.B.* v. *Hyde*, *supra*, at pp. 572-573. *Cf. N.L.R.B.* v. *George E. Light Boat Storage, Inc.*, (5th Cir. 1967) 373

F.2d 762. Therefore, the order of the Board is modified to eliminate therefrom paragraph 2(b) requiring that respondent "pay to the appropriate source any fringe benefits provided for in the above described contract" and to remove from the required notice to be posted that paragraph which reads "We will make whole the appropriate sources for any unpaid fringe benefits provided in the above contract."

As so modified, the order of the Board will be enforced.

[Caption omitted]

Before HAMLEY and JERTBERG, Circuit Judges, and WHELAN, District Judge

The petition for rehearing is denied.

FREDERICK G. HAMLEY,
United States Circuit Judge.

A true copy.
Attest:

WM. B. LUCK, *Clerk.*
By NANCY DUNNE,
Deputy.

APRIL 10, 1968.

N.L.R.B. v. *Strong*
No. 20762

Memorandum to Clerk Luck:

All judges concerned having concurred in the within opinion or order, the clerk will please file.

FREDERICK G. HAMLEY,
Judge.

Received Feb. 5, 1968, Wm. B. Luck, Clerk

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 20,762

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

STRONG ROOFING & INSOLATING CO., RESPONDENT

DECREE

Before: Hamley and Jertberg, Circuit Judges, and Whelan, District Judge.

THIS CAUSE came on to be heard upon the petition of the National Labor Relations Board to enforce its order issued on April 19, 1965, against the above-named Respondent, its agents, successors, and assigns. The Court heard argument of respective counsel on March 10, 1967, and has considered the briefs and the transcript of record filed in this cause. On July 14, 1967, the Court being fully advised in the premises, handed down its opinion granting enforcement of the Board's order as modified. In conformity therewith, it is hereby

ORDERED, ADJUDGED AND DECREED by the United States Court of Appeals for the Ninth Circuit that Respondent, Strong Roofing & Insulating Co., its agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to recognize Roofers Local 36, United Slate, Tile and Composition Roofers, Damp and Waterproof Workers Association as the representative of its employees in the appropriate unit and refusing to honor the 1963-1967 contract between said Union and Roofing Contractors' Association of Southern California, Inc.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the right to self-organization, to form labor organizations,

to join or assist the above-named or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Forthwith execute and honor the 1963-1967 agreement between the Union and Roofing Contractors' Association of Southern California.

(b) Post at its offices at Alhambra, California, copies of the notice attached hereto and marked Appendix. Copies of said notice, to be furnished by the Regional Director for the Twenty-first Region, (Los Angeles, California), shall, after being duly signed by Respondent, be posted immediately upon receipt thereof and maintained by it for a period of 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the said Regional Director in writing, within 10 days from the date of this Decree what steps the Respondent has taken to comply herewith.

Enforced, Decree filed and Entered

February 19, 1968

/s/ William B. Luck
WILLIAM B. LUCK
Clerk

A TRUE COPY,

ATTEST: February 19, 1968
William B. Luck
Clerk
/s/ William E. Wilson
By: WILLIAM E. WILSON, Chief Deputy.

APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO

A Decree of the United States Court of Appeals for the Ninth Circuit enforcing as modified an Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended we hereby notify you that:

WE WILL NOT refuse to recognize ROOFERS LOCAL 36, UNITED SLATE, TILE AND COMPOSITION ROOFERS, DAMP AND WATERPROOF WORKERS ASSOCIATION as the representative of our roofing employees.

WE WILL honor and sign the contract executed between ROOFING CONTRACTORS' ASSOCIATION OF SOUTHERN CALIFORNIA, INC. and ROOFERS LOCAL 36, UNITED SLATE, TILE AND COMPOSITION ROOFERS, DAMP AND WATERPROOF WORKERS ASSOCIATION for the period August 15, 1963, through August 15, 1967, covering a unit of all roofers employed by members of said Association.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the above-named or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all such activities, except to the extent that such right may be affected by an

agreement requiring membership in a labor organization as a condition of employment.

JOSEPH T. STRONG d/b/a
STRONG ROOFING &
INSULATING CO.
(Employer)

Dated _____ By _____
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 849 South Broadway, Los Angeles, California (Telephone No. 688-5204), if they have any question concerning this notice or compliance with its provisions.

SUPREME COURT OF THE UNITED STATES

No. 1339, October Term, 1967

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

JOSEPH T. STRONG, d/b/a STRONG ROOFING & INSULATING CO.

ORDER ALLOWING CERTIORARI. Filed May 27, 1968

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1968 312366 3

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OCTOBER TERM, 1967

No.

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

JOSEPH T. STRONG, d/b/a STRONG ROOFING & INSULATING CO.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The Solicitor General, on behalf of the National Labor Relations Board, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case, insofar as it denies enforcement of the portion of the Board's order requiring the payment of certain fringe benefits.

OPINIONS BELOW

The opinion of the court of appeals (App. A, *infra*, pp. 13–21) is reported at 386 F. 2d 929. The decision and order of the National Labor Relations Board (App. C, *infra*, pp. 27–42) are reported at 152 NLRB 9.

JURISDICTION

The decision of the court of appeals was entered on July 14, 1967 (App. A, *infra*, p. 13). The Board's

timely petition for rehearing *en banc* was denied on January 18, 1968 (App. B, *infra*, p. 22),[1] and a decree was entered on February 19, 1968 (App. B, *infra*, p. 23). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the National Labor Relations Board, upon finding that an employer committed an unfair labor practice by refusing to execute a collective bargaining agreement negotiated on his behalf by a multi-employer group, may require the employer retroactively to pay certain benefits that he would have paid had he signed the contract.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*), are set forth in Appendix D (*infra*, pp. 41–47).

STATEMENT

A. THE BOARD'S DECISION

Respondent Joseph T. Strong is engaged in the roofing of residential and commercial buildings (App.

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[1] While the Board's petition for rehearing was pending, the employer/petitioned for a writ of certiorari to review the portions of the court of appeals' decision which were adverse to it (No. 901, this Term). The Board opposed the employer's petition, and suggested that, since the issue presented by the employer was independent of that raised by the Board, this Court need not await a ruling on the Board's petition for rehearing (Brief in Opp., p. 10, n.9). The employer's petition for certiorari was denied on January 29, 1968.

C, *infra*, p. 2[illegible]; R. 12).[3] As a regular member of the Roofing Contractors Association of Southern California, Strong was bound by any collective bargaining agreements between the Association and the Union, which represented a multi-employer bargaining unit comprised of the employees of the Association's regular members (App. C, *infra*, p. 2[illegible]; R. 13–14; Tr. 13, 37, 59, 85).[4] On August 14, 1963, the Association and the Union agreed upon the terms of a new four-year agreement, to be effective from August 15, 1963, to August 15, 1967 (App. C, *infra*, pp. 2[illegible]–30; R. 15; Tr. 16, 35). One of the terms of this agreement required each employer to make certain payments to various union trust funds (a health and welfare fund, a fund for vacation benefits, and an apprenticeship and training fund); part of these fringe-benefit payments were deducted from the employees' wages, and the remainder represented sums contributed by the employer, based

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[2] "R." references are to Vol. I of the record in the court of appeals; "Tr." references are to the transcript of testimony in Vol. II; "G.C. Exh.", "R. Exh.", and "T.X. Exh." references are to the exhibits of the General Counsel, respondent, and Trial Examiner, respectively.

[3] Roofers Local 36, United Slate, Tile and Composition Roofers, Damp and Waterproof Workers Association.

[4] The Association's By-laws provide (G.C. Exh. 2, p. 9):

"Each and every regular member shall recognize the Association, its counsel, and each of its duly selected labor committees as the member's exclusive bargaining representatives for negotiating, reaching, agreeing to abide by, and/or signing any and all collective bargaining agreements with labor unions. * * * Any such labor contract negotiated by the Committee shall be binding upon the regular members of this Association separately and collectively."

on the hours worked by his employees (G.C. Exh. 4, Art. XI, pp. 14–20).

On August 20, 1963, Strong wrote to a grievance board composed of contractor and union representatives, requesting termination of the contract and the refund of his security deposit (App. C, *infra*, pp. 32–33; R. 15; Tr. 22, 66, 67, R. Exh. 3).[5] In September 1963, Strong asked the Association to change his status from that of a regular member to that of an associate contractor,[6] although he continued to pay regular members' dues until December of that year (App. C, *infra*, p. 34; R. 16; Tr. 14–15, 20, G.C. Exh. 3). He also paid fringe benefits to the Union Roofers Trust Fund in September and October of 1963 (App. C, *infra*, pp. 32–33; R. 15; Tr. 69, 78, 88, G.C. Exh. 5 (a) and (b)).

On October 18, 1963, a Union representative asked Strong's wife, who managed his office, to have Strong sign the new Association contract (App. C, *infra*, p. 35; R. 16; Tr. 90–91). Mrs. Strong stated that her husband had withdrawn from the Association and would not sign (*ibid.*). In December 1963, and in April 1964, Strong and his wife again rejected Union requests that he sign the contract (App. C, *infra*, p. 36; R. 16; Tr. 37, 51–52, 72–73, 84–85, 92).

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[5] The Master Agreement required that regular members deposit $400 with the Association to insure payment of wages and fringe benefits due under the contract (App. C, *infra*, p. 34; R. 15; Tr. 14–15, 22–23, T.X. Exh. 1, G.C. Exh. 4).

[6] Under the By-laws of the Association, associate contractors are members who operate non-union shops and are not covered by the Association's collective bargaining agreement (R. 14; Tr. 24–25, G.C. Exh. 2).

On June 3, 1964, the Union filed unfair labor practice charges with the Board, alleging that Strong's refusal to sign the new Association contract constituted a refusal to bargain, in violation of Sections 8(a) (5) and (1) of the Act. A complaint was issued on these charges. (App. C, *infra*, p. 2[illegible].)

The Board found that Strong's attempt to withdraw from the multi-employer bargaining unit was untimely, and that accordingly Strong's refusal, in and after April 1964, to sign and honor the 1963 Association agreement constituted a refusal to bargain with the Union, in violation of Sections 8(a) (5) and (1) of the Act (App. C, *infra*, pp. 2[illegible]–2[illegible], 3[illegible]–3[illegible], 3[illegible]; R. 17–19). The Board ordered Strong to cease and desist from the unfair labor practices found, to execute and honor the agreement, to pay to the appropriate source any fringe benefits provided for in the contract, and to post appropriate notices (App. C, *infra*, pp. 3[illegible]–3[illegible]; R. 17–19).

B. THE DECISION OF THE COURT OF APPEALS

The court of appeals affirmed the Board's unfair labor practice finding and enforced its order, except for the requirement that Strong pay fringe benefits provided for in the contract (App. A, *infra*, pp. 13–21). As to that provision, the court concluded (App. A, *infra*, p. 21):

> In general, the Board has no power to adjudicate contractual disputes. * * * Here the unfair labor practice was the refusal to bargain by refusing to execute the contract. The order of the Board requiring the payment of fringe benefits to the appropriate source is an order to respondent to carry out provisions of the

contract and is beyond the power of the Board. * * *

REASONS FOR GRANTING THE WRIT

1. The holding of the court below—that the Board may not, as a remedy for an employer's refusal to execute a collective bargaining agreement, in violation of Sections 8(a) (5) and (1) of the Act, order the employer to pay retroactively the fringe benefits which he would have paid under the contract had he signed it—conflicts with the decisions of several other courts of appeals which have enforced similar requirements. In *National Labor Relations Board* v. *George E. Light Boat Storage Co.*, 373 F. 2d 762, 767–768 (C.A. 5), the court enforced a Board order requiring the employer to make back overtime and back welfare-fund payments, pursuant to an existing contract, for the period during which the employer had repudiated the contract and refused to bargain with the union. In rejecting the same arguments which the court below accepted in the present case, the Fifth Circuit held that the Board was authorized to impose such a requirement because it was reasonably designed to remedy the employer's violation of Section 8(a) (5). The court said (373 F. 2d at 768):

> A simple order to bargain in good faith would not be sufficient. To allow an employer unlawfully to repudiate a collective bargaining agreement at the small cost of being required, sometime in the future, to sit down and bargain with the union would encourage such violations of the Act. * * * The temptation to violate the Act in a situation where the employer would have

everything to gain and nothing to lose could be overwhelming.

Similarly, in *National Labor Relations Board* v. *Huttig Sash & Door Co.*, 362 F. 2d 217 (C.A. 4), the court enforced a Board order requiring an employer to compensate the employees for any benefits which were due them under a contract, but which had been withheld by reason of the employer's unlawful refusal to sign the contract after he had reached agreement with the union on all of its terms. And the Second Circuit, in *National Labor Relations Board* v. *Sheridan Creations, Inc.*, 384 F. 2d 696, held an employer in civil contempt for refusing to make retroactive contributions to certain union trust funds pursuant to that court's earlier decree (357 F. 2d 245), enforcing a Board order based on a finding, similar to the finding involved in the present case, that the employer had violated Section 8(a)(5) by refusing to ratify a collective bargaining agreement negotiated in his behalf by a multi-employer association from which he had made an untimely attempt to withdraw. Although neither *Huttig* nor *Sheridan Creations* discussed the validity of the Board's provision for retroactive payments, those decisions necessarily recognized the Board's authority to grant such relief.[7]

[7] In several other cases the courts have enforced Board orders containing back payment requirements similar to the requirement in issue in this case. See *e.g.*, *National Labor Relations Board* v. *Ogle Protection Service, Inc.*, 375 F. 2d 497, 500-501 (C.A. 6), enforcing 149 NLRB 545, 548, certiorari denied, 389 U.S. 843; *National Labor Relations Board* v. *M & M Oldsmobile, Inc.*, 377 F. 2d 712 (C.A. 2), enforcing 156 NLRB 903, 917; *National Labor Relations Board* v. *Huttig Sash & Door Co.*, 377 F. 2d 964 (C.A. 8), enforcing 154 NLRB 811, 812.

It is immaterial that *Light Boat* and *Huttig* involved an employer's refusal to perform or execute a contract negotiated directly between him and the union, whereas the contract in the present case (like that in *Sheridan Creations*) involved a contract negotiated in his behalf by a multi-employer group of which he was a member. In either situation, the governing legal principle is the same: The Board, in order effectively to cure the employer's unfair labor practice of refusing to execute the contract, may require him to perform the acts he would have done under the contract if he had not repudiated it, and thus restore the benefits that have been unlawfully withheld from the employees by reason of the unfair labor practice. The rationale of the court of appeals in this case—that the Board's order was improper because it constituted an attempt to enforce contract rights, a function that Congress has given to the courts and not to the Board[8]—would have been equally applicable in *Light Boat* and *Huttig* and would have led to invalidation of the Board's orders in those cases. The decision of the court of appeals in the present case, both in its result and its reasoning, is at odds with the foregoing decisions of three other circuits.

2. The decision below is also contrary to the principles which this Court has enunciated respecting the scope of the Board's remedial authority under Section 10(c) of the Act, which empowers the Board to order a person who has engaged in an unfair labor

[8] See Section 301 of the Labor-Management Relations Act, 61 Stat. 156 (App. D, *infra*, p. 4).

practice "to take such affirmative action * * * as will effectuate the policies of this Act." Under this provision, the Board has power to enter an order which will restore "the situation, as nearly as possible, to that which would have obtained but for the [unfair labor practices]." *Phelps Dodge Corp.* v. *National Labor Relations Board,* 313 U.S. 177, 194. See also *Fibreboard Corp.* v. *National Labor Relations Board,* 379 U.S. 203, 216. The Board's requirement that respondent pay the back fringe benefits in this case is entirely consistent with that standard.

The full remedy for respondent's unfair labor practice in the present case was to deprive him of the advantages of his unlawful conduct by requiring him to pay the clearly ascertainable fringe benefits which had accrued during that period. The purpose of such a requirement is not to enforce private contract rights but to protect the union's status as bargaining representative and to effectuate the policies of the Act. See *National Labor Relations Board* v. *C & C Plywood Corp.,* 385 U.S. 421, 429 n.15; *George E. Light Boat, supra,* 373 F. 2d at 768–769; *National Labor Relations Board* v. *United Nuclear Corp.,* 381 F. 2d 972, 979 (C.A. 10). The theory of the court below, that the Board improperly was enforcing contract rights,[9]

[9] The cases relied on by the court below (App. A, *infra*, p. 21) do not support its position. As we have shown, *George E. Light Boat, supra,* holds precisely to the contrary. And the Board's decision in *National Labor Relations Board* v. *Hyde,* 339 F. 2d 568, 572 (C.A. 9), enforcing 145 NLRB 1252, in which it rejected the Examiner's recommendation that the employer be ordered not only to "honor" but also to "comply" with the terms of the contract, is not inconsistent with its remedy in this case; the breadth of the Examiner's proposed order

reflects the same misconception of the agency's authority that the court evinced in *National Labor Relations Board* v. *C & C Plywood Corp.*, 351 F. 2d 224 (C.A. 9), reversed, 385 U.S. 421, in which this Court held that the Board may interpret collective bargaining agreements when necessary to determine and effectuate the rights guaranteed in the Act. Similarly, the Board is not precluded from providing an appropriate remedy merely because such relief is measured by contractual rights.

3. The issue is important in the administration of the Act. The requirement which the court below refused to enforce is one which the Board customarily prescribes for the type of unfair labor practices found here.[10] Unless it is corrected by this Court, the decision below will cast uncertainty over the Board's authority to impose effective remedies for an employer's failure to comply with his statutory duty to bargain.

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in *Hyde* would have required the Board to oversee the entire contract and determine whether the employer's subsequent performance satisfied all of its terms. See *George E. Light Boat*, *supra*, 373 F. 2d at 768, 769.

[10] In addition to the cases cited *supra*, pp. 6–7, see *e.g.*, *B–Y Manufacturing, Inc.*, 166 NLRB No. 95, p. 3; *Tanner Motor Livery, Ltd.*, 160 NLRB 1669, 1688; *Quiel Bros. Electric Sign Service*, 153 NLRB 326, 331; *Mayes Bros., Inc.*, 153 NLRB 18, 24; *Big Run Coal & Clay Co.*, 152 NLRB 1144, 1148; *Selma Trailer & Mfg. Co.*, 151 NLRB 1342, 1351; *Cooke & Jones, Inc.*, 146 NLRB 1664, 1679, 1681.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be granted.

ERWIN N. GRISWOLD,
Solicitor General.

JOSEPH J. CONNOLLY,
Assistant to the Solicitor General.

ARNOLD ORDMAN,
General Counsel,

DOMINICK L. MANOLI,
Associate General Counsel,

NORTON J. COME,
Assistant General Counsel,

JOHN I. TAYLOR,
Attorney,
National Labor Relations Board.

APRIL 1968.

APPENDIX A

United States Court of Appeals for the Ninth Circuit

No. 20762

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

JOSEPH T. STRONG d/b/a STRONG ROOFING AND INSULATING CO., RESPONDENT

[July 14, 1967]

On Petition for Enforcement of an Order of the National Labor Relations Board

Before HAMLEY and JERTBERG, Circuit Judges, and WHELAN, District Judge

WHELAN, *District Judge:* This case is before the Court on the petition of the National Labor Relations Board to enforce its order against Respondent Joseph T. Strong d/b/a Strong Roofing and Insulating Co.

The Board's decision and order are reported at 152 N.L.R.B. No. 2. This Court has jurisdiction of the matter.

The Board found that respondent by refusing to sign and honor a collective bargaining agreement negotiated on behalf of respondent by a multi-employer association to which respondent belonged and through which respondent participated with the Union, has refused to bargain and has engaged in unfair labor practices within the meaning of Section 8(a)(5) and Section 8(a)(1) of the National Labor Relations Act, as amended, 29 U.S.C. 158(a)(5) and 158(a)(1).

Respondent was ordered by the Board to cease and desist from refusing to recognize the Union as the representative of respondent's employees in the multi-employer bargaining unit and refusing to honor the 1963–1967 contract between the Union and the Association and from, in any like or related manner, interfering with, restraining or coercing his employees in the exercise of their statutory rights. Respondent was also ordered to forthwith execute and honor the 1963–1967 contract and to pay to the appropriate source any fringe benefits provided for in the above described contract, as well as to post the usual notice and give notification of the posting of the notice to the representative of the Board within the time provided in the order.

While before the Board respondent contended that the Board did not have jurisdiction to hear the complaint against respondent in that respondent was not engaged in a business affecting commerce within the meaning of Sections 2(6) and 2(7) of the National Labor Relations Act, as amended, and has not engaged in conduct affecting commerce over which the Board has jurisdiction under Section 10(a) of said Act, the respondent has abandoned such contention before this Court.[1]

Resisting the petition for enforcement, respondent first argues that the unfair labor practice charge was filed more than six months following respondent's refusal to execute the multi-employer contract.

The unfair labor practice charge was filed on June 3, 1964. On October 18, 1963, the Union representative contacted respondent's wife who managed the office

[1] In any event, the Board found that the operations of respondent do affect commerce within the meaning of said Sections 2(6) and 2(7) of the Act; and such finding is supported by substantial evidence and such finding is correct.

of respondent in an attempt to have the 1963–1967 multi-employer contract with the Union signed. Respondent's wife told the representative that respondent had withdrawn from the Association and therefore would not sign. The following day she told the Union representative that she had spoken to respondent, who had confirmed his intent to withdraw from the Association, and that he therefore would not sign the agreement. Again on December 10, 1963, respondent's wife said respondent would not sign the contract because he no longer employed any Union members. Finally in April 1964 respondent was again contacted by a Union representative, at which time respondent refused to sign the contract for "economic reasons."

While it is true that the first refusal to sign the contract in October 1963 was barred as the basis of an unfair labor practice charge by Section 10(b) of the Act as being more than six months prior to the date of the filing of the unfair labor practice charge, and while it is true that had nothing further occurred thereafter respondent's contention would be well taken, here there were further refusals within a period of six months prior to the date of filing of the charge.

The obligation of respondent to bargain collective with the Union was a continuing one. *N.L.R.B.* v. *White Construction Co.*, 204 F. 2d 950, 952–953, (5th Cir. 1953) 204 F. 2d 950, 953. Respondent had the obligation to bargain collectively and to execute the contract when the Union requested him so to do. Section 8(d) of the Act, Title 29, U.S.C., 158(d). This obligation extends to the execution of a bargaining agreement executed by an employers Association of which an employer is a member with the Union. *N.L.R.B.* v. *Jeffries Banknote Co.*, (9th Cir. 1960) 281 F. 2d 893, 896.

Respondent's reliance on Local 1424, I.A.M. v. *N.L.R.B.*, 362 U.S. 411, is without merit. In *Local 1424, supra,* the Supreme Court said at 362 U.S. pp. 416–417:

> "[I]n applying rules of evidence as to the admissibility of past events, due regard for the purposes of Section 10(b) requires that two different kinds of situations be distinguished. The first is one where occurrences within the six month limitations period in and of themselves may constitute, as a substantive matter, unfair labor practices. There, earlier events may be utilized to shed light on the true character of matters occurring within the limitations period; and for that purpose Section 10(b) ordinarily does not bar such evidentiary use of anterior events. The second situation is that where conduct occurring within the limitations period can be charged to be an unfair labor practice only through reliance on an earlier unfair labor practice. There the use of earlier unfair labor practices is not merely 'evidentiary' since it does not simply lay bare a putative current unfair labor practice. Rather, it serves to cloak with illegality that which was otherwise lawful."

In the instant case each of the two refusals of respondent to sign the contract within the six month limitation period in and of itself constitutes, as a substantive matter, unfair labor practice. Therefore, the Board was entitled to consider the refusal of respondent in October 1963 to sign the contract as evidence to shed light on the true character of the refusals occurring within the limitation period. *International Union, United Automobile, etc. Workers of America, AFL–CIO* v. *N.L.R.B.*, (D.C. Cir. 1966) 363 F.2d 706–707.

Respondent next argues that the Union was estopped by its conduct during the period commencing

August 1963 and ending June 3, 1964, from contending that it did not consent to the respondent's withdrawal from the multi-employer unit and release from the obligations of the multi-employer contract.

The examiner's findings concerning the question of estoppel, adopted by the Board, may be summarized briefly as follows:

Respondent is an individual engaged in the roofing of residential and commercial buildings. He joined the Roofing Contractors Association of Southern California, Inc. (hereafter the Association) about 1949 and at one time served as its president. He had for many years been a regular member as defined in the Association's by-laws.

The Association was formed for the purpose, inter alia, of negotiating labor contracts with Roofers Local 36, United Slate, Tile and Composition Roofers, Damp and Waterproof Workers Association (hereafter Union). By-laws of the Association provide for regular members and also for associate contractor members. Regular members are contractors who operate union shops and who, under the by-laws of the Association, are bound by the collective bargaining contract negotiated by the Association. Associate contractor member are contractors who operate non-union shops and who are not covered by the Association's collective bargaining agreement.

As a regular member of the Association, respondent signed the August 15, 1960, to August 14, 1963, agreement with the Union and the Association. During such contract term and on January 23, 1962, respondent wrote the Union requesting termination of the contract at the earliest possible time. He received no response to such letter. There is no evidence that such letter was ever transmitted to the Association. However, under the terms of such contract, respondent

could not terminate such agreement as such contract was for a fixed period. Despite his letter he continued to observe the contract and paid fringe benefits to the Union Roofers Trust Account.

Prior to the start of contract negotiations with the Union in March of 1963, the Association mailed authorization proxies to its regular members, including respondent, for their information only. Whether or not the regular members sign proxies they are bound by any agreement reached in the negotiations. Respondent neither signed nor returned the proxy; respondent testified that in the past he had not always signed the proxies. The negotiations between the Union and Association continued until August 14, 1963, when the terms of a new four-year contract were agreed upon; the contract was ratified by the Union membership on August 17, 1963, and had an effective date of August 15, 1963. During the negotiations the Association informed all regular members, including respondent, of progress and invited them to attend two open negotiating sessions.

Respondent did not notify the Association that he was withdrawing as a regular member of the Association prior to the execution of the 1963-1967 contract.

Though regular members are automatically bound by the negotiated collective bargaining agreement, it has been the past practice of the Union to have each of the members sign a copy of the contract.

On August 20, 1963, respondent wrote the Joint Labor Relations Board, a grievance board composed of contractor and Union representatives, requesting termination of the contract and the refund of his security deposit pursuant to the Master Agreement dated August 15, 1963. Upon receipt of this letter the Joint Labor Relations Board, without further action, turned it over to the Association's representative.

In September 1963 respondent telephoned the Association and requested that his status be changed from that of a regular member to that of an associate contractor member, but he paid the higher regular member dues in October, November, and December of 1963 and paid fringe benefits to the Union Roofers Trust Fund in September and October of 1963. Under the terms of the 1963-1967 contract, respondent could not unilaterally terminate the contract.

In December 1963 the Association credited his account with the difference between the regular and associate membership dues for October, November, and December of that year, and in January 1964 returned to him his deposit given as security to the Association to insure payment of wages and fringe benefits by him. Prior to the return of the deposit by the Association, he had not received an answer to his August 20, 1963, letter to the Joint Labor Relations Board requesting termination of the contract.

In the three contacts of respondent by the Union in October and December of 1963, and in April of 1964, the Union representatives merely asked respondent to sign the agreement and did not state that respondent was bound by the Association-wide master contract. What did occur on those three occasions was the request by the Union representatives that respondent sign an individual contract after the master agreement had been negotiated precisely as respondent had been requested with respect to earlier contracts so to sign and as other regular members of the Association were requested both with respect to the 1963–1967 contract and earlier contracts.

The trial examiner found that the failure of the Union representatives to tell respondent that he was bound by the master contract was not evidence of a waiver and the Board adopted such finding.

The reviewing power of this Court over orders of the Board is set forth in Section 10(f) of the Act, which states:

> "[T]he findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive."

The standard of review set forth in that provision is elaborated upon in *Universal Camera Corp.* v. *N.L.R.B.*, 340 U.S. 464 (1951) and its companion case, *N.L.R.B.* v. *Pittsburgh S.S. Company*, 340 U.S. 498 (1951). If the findings are not supported by substantial evidence on the record when considered as a whole, it is our duty to set aside and refuse enforcement of the order of the Board. *Universal Camera Corp.* v. *N.L.R.B., supra; N.L.R.B.* v. *Isis Plumbing and Heating Co.*, 322 F. 2d 913 (9th Cir. 1963); *Lozano Enterprises* v. *N.L.R.B.*, 357 F. 2d 509 (9th Cir. 1966).

Under the rationale expressed in *Universal Camera, supra*, it is our duty in determining the substantiality of evidence supporting a Labor Board decision to take into account contradictory evidence or evidence from which conflicting inferences could be drawn.

> "'The substantiality of evidence must take into account whatever in the record fairly detracts from its weight.'" *Universal Camera, supra*, at 847.

We do not find the inferences drawn from the record by the trial examiner to be unreasonable.

In our view the findings of the Board are supported by substantial evidence in the record considered as a whole, and are therefore conclusive upon us.

However, respondent's contention that the Board erred in including in its order a requirement that respondent pay to the appropriate source any fringe benefits provided for in the contract between the

Association and the Union is well taken. In general, the Board has no power to adjudicate contractual disputes. *N.L.R.B. v. Hyde,* (9th Cir. 1964) 339 F. 2d 568, 572; *United Steel Workers of America AFL–CIO v. American International Aluminum Corp.,* (5th Cir.) 334 F. 2d 147, 152. Here the unfair labor practice was the refusal to bargain by refusing to execute the contract. The order of the Board requiring the payment of fringe benefits to the appropriate source is an order to respondent to carry out provisions of the contract and is beyond the power of the Board. See *N.L.R.B. v. Hyde, supra,* at pp. 572–573. *Cf. N.L.R.B. v. George E. Light Boat Storage, Inc.,* (5th Cir. 1967) 373 F. 2d 762. Therefore, the order of the Board is modified to eliminate therefrom paragraph 2(b) requiring that respondent "pay to the appropriate source any fringe benefits provided for in the above described contract" and to remove from the required notice to be posted that paragraph which reads "We will make whole the appropriate sources for any unpaid fringe benefits provided in the above contract."

As so modified, the order of the Board will be enforced.

APPENDIX B

In the United States Court of Appeals for the Ninth Circuit

Order No. 20762

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

JOSEPH T. STRONG d/b/a STRONG ROOFING AND INSULATING CO., RESPONDENT

Before HAMLEY and JERTBERG, Circuit Judges, and WHELAN, District Judge

The petition for rehearing is denied.

FREDERICK G. HAMLEY,
United States Circuit Judge.

A true copy.
Attest:

WM. B. LUCK, *Clerk.*
By NANCY DUNNE,
Deputy.

APRIL 10, 1968.

N.L.R.B. v. *Strong*
No. 20762

Memorandum to Clerk Luck:

All judges concerned having concurred in the within opinion or order, the clerk will please file.

FREDERICK G. HAMLEY,
Judge.

United States Court of Appeals for the Ninth Circuit

No. 20762

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

STRONG ROOFING & INSULATING CO., RESPONDENT

DECREE

Before HAMLEY and JERTBERG, Circuit Judges, and WHELAN, District Judge

THIS CAUSE came on to be heard upon the petition of the National Labor Relations Board to enforce its order issued on April 19, 1965, against the above-named Respondent, its agents, successors, and assigns. The Court heard argument of respective counsel on March 10, 1967, and has considered the briefs and the transcript of record filed in this cause. On July 14, 1967, the Court being fully advised in the premises, handed down its opinion granting enforcement of the Board's order as modified. In conformity therewith, it is hereby

ORDERED, ADJUDGED AND DECREED by the United States Court of Appeals for the Ninth Circuit that Respondent, Strong Roofing & Insulating Co., its agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to recognize Roofers Local 36, United Slate, Tile and Composition Roofers, Damp and Waterproof Workers Association as

the representative of its employees in the appropriate unit and refusing to honor the 1963–1967 contract between said Union and Roofing Contractors' Association of Southern California, Inc.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the above-named or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Forthwith execute and honor the 1963–1967 agreement between the Union and Roofing Contractors' Association of Southern California.

(b) Post at its offices at Alhambra, California, copies of the notice attached hereto and marked Appendix. Copies of said notice, to be furnished by the Regional Director for the Twenty-first Region (Los Angeles, California), shall, after being duly signed by Respondent, be posted immediately upon receipt thereof and maintained by it for a period of 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the said Regional Director in writing, within 10 days from the date of this

Decree what steps the Respondent has taken to comply herewith.

Enforced, Decree filed and Entered, February 19, 1968.

WILLIAM B. LUCK, *Clerk.*

A TRUE COPY.
Attest: February 19, 1968.

WILLIAM B. LUCK, *Clerk.*
By WILLIAM E. WILSON, *Chief Deputy.*

APPENDIX

NOTICE TO ALL EMPLOYEES PURSUANT TO a Decree of the United States Court of Appeals for the Ninth Circuit enforcing as modified an Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended we hereby notify you that:

WE WILL NOT refuse to recognize ROOFERS LOCAL 36, UNITED SLATE, TILE AND COMPOSITION ROOFERS, DAMP AND WATERPROOF WORKERS ASSOCIATION as the representative of our roofing employees.

WE WILL honor and sign the contract executed between ROOFING CONTRACTORS' ASSOCIATION OF SOUTHERN CALIFORNIA, INC. and ROOFERS LOCAL 36, UNITED SLATE, TILE AND COMPOSITION ROOFERS, DAMP AND WATERPROOF WORKERS ASSOCIATION for the period August 15, 1963, through August 15, 1967, covering a unit of all roofers employed by members of said Association.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the above-named or any other labor orga-

nization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment.

JOSEPH T. STRONG,
d/b/a STRONG ROOFING & INSULATING CO.,
(*Employer*).

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 849 South Broadway, Los Angeles, California (Telephone No. 688-5204), if they have any question concerning this notice or compliance with its provisions.

APPENDIX C

Joseph T. Strong d/b/a Strong Roofing & Insulating Co. and Roofers Local 36, United Slate, Tile and Composition Roofers, Damp and Waterproof Workers Association. *Case No. 21-CA-5978. April 19, 1965*

DECISION AND ORDER

On January 8, 1965, Trial Examiner Martin S. Bennett issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices within the meaning of the Act, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision and a supporting brief. The General Counsel filed a brief in support of the Trial Examiner's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel [Members Fanning, Brown, and Jenkins].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudical error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the Board hereby adopts as its Order, the Order recommended by the Trial Examiner and orders that Respondent, Strong Roofing & Insulating Co., its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

This matter was heard before Trial Examiner Martin S. Bennett at Los Angeles, California, on October 20, 1964. The complaint [1] alleges that Respondent, Joseph T. Strong d/b/a Strong Roofing & Insulating Co., had engaged in unfair labor practices within the meaning of Section 8(a)(5) and 8(a)(1) of the Act. Oral argument was waived and briefs have been submitted by the General Counsel and Respondent.

Upon the entire record in the case, and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. Jurisdictional findings

Joseph T. Strong, an individual proprietor doing business under the trade name and style of Strong Roofing & Insulating Co., is engaged in the roofing of residential and commercial buildings. This concern annually purchases supplies valued at less than $50,000.

[1] Issued August 19, and based upon a charge filed June 3, 1964, by Roofers Local 36, United Slate, Tile and Composition Roofer, Damp and Waterproof Workers Association, herein called the Union.

Since approximately 1949, but not after September of 1964, Respondent was a member of Roofing Contractors' Association of Southern California, Inc., herein called the Association. The latter is an association of roofing contractors in southern California which negotiates collective-bargaining agreements in behalf of its members with the charging Union and its sister Local 72. At least one of the members of this Association annually performs services valued in excess of $50,000 outside the State of California.

Finding hereinafter that Respondent was a member of this Association at the time material herein, I further find that the operations of Respondent affect commerce within the meaning of Section 2 (6) and (7) of the Act and that it would effectuate the purposes of the Act to assert jurisdiction herein. *N.L.R.B.* v. *Miscellaneous Drivers & Helpers, Local 610 Funeral Directors of Greater St. Louis*, 293 F. 2d 437 (C.A. 8), and *Insulation Contractors of Southern California, Inc., et al.*, 110 NLRB 638.

II. The labor organization involved

Roofers Local 36, United Slate, Tile and Composition Roofers, Damp and Waterproof Workers Association is a labor organization within the meaning of Section 2(5) of the Act.

III. The unfair labor practices

A. The issue; introduction

A contract between the Association, in behalf of its members and the Union, was in effect from August 15, 1960, to August 14, 1963. Negotiations on a successor contract commenced in March of 1963 and an agreement was arrived at on August 14, 1963, for the period from August 15, 1963, through August 15,

1967. Both contracts provided for year-to-year renewal after the stated term, absent a 60-day notice prior to the end of said term or any subsequent yearly period.

Respondent has refused to sign and honor the 1963–67 agreement, claiming that it withdrew from the multiemployer bargaining unit and, further, that the Union consented to this withdrawal. The General Counsel alleges that Respondent's attempted withdrawal took place at an inappropriate time and urges, contrary to Respondent, that the Union never waived its rights herein; he contends that a refusal to bargain took place on and after June 2, 1964.[2]

It may be noted that the Association has 85 "regular" members who operate unionized shops in behalf of whom, as stated, it has for many years negotiated an associationwide contract. Since June of 1962, it has recognized a new category of associate contractor members, some 10 or 11 in number; these operate nonunion shops and are not covered by the contract. Treated with hereinafter is Respondent's change of

[2] The complaint refers to prior conduct which was fully litigated herein. Respondent has contended that the 6-month statute of limitations established by Section 10(b) bars the complaint, and relies upon the Union's first demand in October 1963, described below, that the Respondent sign the Association contract; the evidence, however, goes beyond and treats with Respondent's subsequent refusals to honor the contract. more particularly, aside from a meeting in December of 1963, there is evidence that a union representative met with Respondent in April of 1964, the date the General Counsel presumably had in mind, and the charge was filed on June 3, 1964. Consequently, the rationale of *Local Lodge No. 1424, International Association of Machinists (Bryan Manufacturing Co.)* v. *N.L.R.B.*, 362 U.S. 411, is deemed not to be in point. See *Local Union No. 269, International Brotherhood of Electrical Workers (Mercer County Division, New Jersey Chapter, National Electrical Contractors Association)*, 149 NLRB 768.

its membership from a regular to an associate contractor membership, as well as its resignation from the Association, and the effect of these moves upon Respondent's coverage by the contract.

B. Appropriate unit and majority representation therein

The General Counsel contends that all roofers employed by [regular] members of the Association constitute a unit appropriate for the purposes of collective bargaining. This is an associationwide unit of the type regularly recognized by the Board and I find it is an appropriate unit within the meaning of Section 9(b) of the Act.

The General Counsel further contends that at all times since August 15, 1963, the effective date of the most recent agreement, the Union has been the representative of a majority of the employees in the above-described unit, including those of Respondent. Respondent does not dispute the Union's representative status among the other members of the Association, but again predicates its denial of said representative status among the employees of Respondent upon its attempted withdrawal from the unit. For reasons hereinafter set forth, I find that the Union has been at all times material herein, and now is, the exclusive representative of all employees in said unit within the meaning of Section 9(a) of the Act.

C. Sequence of events

As set forth, a contract between the Association and the Union was in effect from August 15, 1960, through August 14, 1963. Respondent, as a regular member of the Association, was bound by this contract and adhered to its terms. Indeed, consistent with custom whereby the Union obtained signed copies of the con-

tracts from the respective members of the Association, Joseph Strong had signed the 1960 contract.* On January 23, 1962, Respondent wrote to the Union, as follows:

> Persuant [sic] to Article IX, paragraphs A, and B, in the Master Labor Agreement dated August 15, 1960 to August 14, 1963, inclusive, I, J. T. Strong dba as sole proprietor of the Strong Roofing and Insulating Company located at 710 South Garfield Avenue, Alhambra, do hereby respectfully request termination of the above Master Labor Agreement.
>
> Date of termination to be soon as possible under the terms of the Agreement.
>
> Request this intent of termination to be brought to the attention at the next regular meeting of the Joint Labor Relations Board, at their February 6, 1962, meeting.

Strong testified that he believed that this clause, as well as an identical clause in the 1963–67 contract, permitted him to terminate the contract on 60 days' notice. However it is quite clear that the clause in both contracts does not so provide. It establishes a term from August 15, 1960, through August 14, 1963, and from year to year thereafter, absent 60 days' notice prior to August 14, 1963, or the end of any subsequent yearly period to terminate or modify the contract. Furthermore, Strong never received a reply to this letter, which was sent via regular mail and there is no direct evidence of its receipt by the Union. Respondent continued to live up to the terms of the agreement in all respects, including payment of fringe benefits.

Negotiations for a successor contract covered the

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* All regular members of the Association give it the right to bargain for them; agree under the bylaws not to engage in individual bargaining; and agree to accept the negotiated contract.

period from March 1963, through August 14, 1963. A new contract was reached on August 14, for a term from August 15, 1963, through August 15, 1967.

There is evidence by Executive Director David Van Eyk of the Association that all members of the Association were kept posted as to the progress of the 1963 negotiations. Two open negotiating meetings were held on May 21 and July 13, 1963, and all regular members were invited to attend. And, on July 27, each regular member was mailed a document reflecting all contract matters that had been agreed upon as of that date. Moreover, on September 24, 1963, Respondent made fringe payments to the "Union Roofers Trust Account" for the month ending August 31 as required by the Association's contract with the Union. And, on October 19, 1963, a similar payment was made for the month ending September 25, 1963.

On August 20, 1963, Respondent wrote to the Joint Labor Relations Board. This is a Board set up under the grievance procedure of the contracts, composed equally of contractor and union representatives, to handle grievances or disputes, under the contracts. The letter was referred to the Association, and no issue is raised by the General Counsel as to whether it was sent to the proper party.[1] In the letter, Strong stated:

> Persuant [sic] of that Artle [sic] in the Master Agreement dated August 15, 1963; to and including August 15, 1967, pertaining to the termination of the Master Contract, I, J. T. Strong d.b.a. as the Strong Roofing & Insulation Company, located at 710 South Garfield Avenue, Alhambra; request action in accordance with the above noted Article in the current Master Agreement [sic].

[1] This registered letter was not delivered until August 27.

> Date of termination to be set at next regular meeting of the J.L.R.B., who shall release de-post [sic] of $400.00 held as guarantee of faithful performance regarding labor payments as so described in Master Agreement.

Here as well, it is apparent that Strong believed that the language he referred to provided for a 60-day notice pursuant to which he could be released from the provisions of the contract. The reference to the $400 bond is to a bond required of the regular members of the Association under the Master Labor Contract to insure payment of wages and fringe benefits. Strong also testified that he had made the fringe benefit payments in September and October, described above, pursuant to his concept of honoring the contract for its last 60 days.

About the end of September, according to Van Eyk, Strong telephoned the Association and asked that his status as a regular member (under the contract) be changed to that of an associate contractor member (nonunion); this meant a reduction from $17.25 to $15 per month in dues. Respondent continued to pay the higher sum on or about the first of the months of October, November, and December of 1963. On December 18, the Association reduced the amount of the payment to $15 per month and placed a credit of $6.75 to Respondent on its books; this reflected a credit of $2.25 for each of the months of October, November, and December. I find that the status of Respondent was changed to that of an associate contractor member on December 18, retroactive to October 1, 1963.

On September 30, 1963, the Association canceled Respondent's bond and on January 3, 1964, the cash deposit of $400 was returned to him. The record further discloses that in September of 1964, Respondent withdrew from the Association.

There have been three contacts of Respondent by representatives of the Union subsequent to the signing of the contract on August 14, 1963. On October 18 or 20, 1963, according to Mrs. Joseph Strong who handles administrative details for Respondent, one Sheridan, a representative of the Union, called at the office and stated that the Union wished Respondent to sign a copy of the newly negotiated agreement. As noted, this had been routine practice for many years. Mrs. Strong refused to sign, stating that her husband had previously notified the Association of his intent not to resign, manifestly a reference to the letter of August 20, 1963. Mrs. Strong reaffirmed this position in a telephone conversation with Sheridan on the following day.

Sheridan again visited Respondent's office on December 10, 1963, and, according to Mrs. Strong, renewed his request that Respondent sign the contract. Mrs. Strong refused, stating that she no longer had any "union men" and claiming that several (if not all) of her employees had withdrawn from the Union and were going into business for themselves.

In April of 1964, William Nuttall, a representative of the Union, called upon Strong and asked him to sign the contract. Strong refused, referred to the number of nonunion contractors in the area and stated, according to Nuttall, that "he would rather go nonunion rather than sign it . . ." Strong admitted refusing to sign the contract "for economic reasons."

D. Analysis and conclusions

The Board recognizes that employer members of a multiemployer bargaining unit may withdraw from multiemployer bargaining. See, e.g., *Seattle Automotive Wholesalers Assocation, et al.*, 140 NLRB 1393. But a basic requisite has been that an employer do so

unequivocally and at an appropriate time. And the Board has made it clear that an attempt at withdrawal *after* a multiemployer agreement has been reached is ineffective because the time has become inappropriate. See, e.g., *N.L.R.B.* v. *Jeffries Bank Note Co.*, 281 F. 2d 893 (C.A. 9); *Fairbanks Dairy, Division of Cooperdale Dairy Company*, 146 NLRB 893; *Cooke & Jones, Inc.*, 146 NLRB 1664; *Walker Electric Company*, 142 NLRB 1214; and *Donaldson Sales, Inc.*, 141 NLRB 1303.

In the instant case, Respondent's letter of January 23, 1962, manifestly had no legal effect because the contract did not expire until August 14, 1963, and it did not provide for a prior termination. And, in 1963, while negotiations were going on for a new contract, Respondent was put on notice thereof, but took no steps to withdraw from the Association. Indeed, it proceeded to honor the new contract and lived up to its fringe-benefit requirements for the months of August and September of 1963.

Respondent has argued that in the three contacts with it by the Union described above, the union representatives merely asked Respondent to sign the agreement and did not state that Respondent was bound by the associationwide master contract. But it is clear that Respondent, and the record discloses that Strong was a past president of the Association presumably familiar with its procedures, was asked, on these occasions, to sign an individual contract after the master agreement had been negotiated precisely as it had been in the past; the other regular members of the Association were also asked. Stated otherwise, the associationwide contract was negotiated in 1963, and the members of the Association were thereafter respectively asked to sign individual copies, just as had been done in the past. This is not evidence of a

waiver and Respondent's contention to that effect is rejected.

While Respondent changed its membership to that of associate contractor member, after the signing of the 1963 contract; reclaimed its bond; and, in 1964, withdrew from the Association, I fail to see how this helps it, all these occurring too late in the day.

And while Respondent draws attention to the fact that, when negotiations commenced on new contracts, the Association was in the habit of sending proxies to regular members as well as to nonmembers, the record demonstrates that there was no requirement that regular members sign and return the proxies, and in fact some did not. Indeed, Strong admittedly did not sign all such proxies and did not recall whether he signed one in 1960, despite the fact that he lived up to the 1960 contract.

I find, in view of the foregoing considerations, that, on and after April of 1964, Respondent, by failing and refusing to sign and honor the agreement negotiated by the Association with the Union covering the period from August 15, 1963, through August 15, 1967, has refused to bargain and has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act. See *Mixermobile Manufacturers, Inc.*, 149 NLRB 592; *Ogle Protection Service, Inc., et al.*, 149 NLRB 545; and *Tulsa Sheet Metal Works, Inc.*, 149 NLRB 1487.

IV. The effect of the unfair labor practices upon commerce

The activities of Respondent, set forth in section III, above, and occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to

lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The remedy

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act.

It has been found that Respondent has refused to bargain with the Union as the duly designated representative of its employees in an appropriate unit. I shall therefore recommend that Respondent sign and honor the agreement negotiated between the Association and the Union covering the period from August 15, 1963, through August 15, 1967, and that it pay to the appropriate source any fringe benefits provided for therein.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, I make the following:

CONCLUSIONS OF LAW

1. Joseph T. Strong d/b/a Strong Roofing & Insulating Co. is an employer within the meaning of Section 2(2) of the Act.

2. Roofers Local 36, United Slate, Tile and Composition Roofers, Damp and Waterproof Workers Association is a labor organization within the meaning of Section 2(5) of the Act.

3. All roofers employed by members of Roofing Contractors' Association of Southern California, Inc., including Respondent, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Roofers Local 36, United Slate, Tile and Compo-

sition Roofers, Damp and Waterproof Workers Association has been at all times since August 15, 1963, and now is, the exclusive representative of all employees in the aforesaid appropriate unit within the meaning of Section 9(a) of the Act.

5. By refusing on and after April 1964, to bargain in good faith with the Union as the exclusive representative of its employees in the aforesaid appropriate unit. Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the foregoing conduct, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Recommended Order.

Upon the basis of the foregoing Findings of Fact and Conclusions of Law, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, it is recommended that Respondent, Joseph T. Strong d/b/a Strong Roofing & Insulating Co., Alhambra, California, his agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to recognize Roofers Local 36, United Slate, Tile and Composition Roofers, Damp and Waterproof Workers Association as the representative of its employees in the above-described appropriate unit and refusing to honor the 1963–67 contract between said Union and Roofing Contractors' Association of Southern California, Inc.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of

the right to self-organization, to form labor organizations, to join or assist the above-named or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Forthwith execute and honor the 1963–67 agreement between the Union and Roofing Contractors' Association of Southern California.

(b) Pay to the appropriate source any fringe benefits provided for in the above-described contract.

(c) Post at its offices at Alhambra, California, copies of the attached notice and marked "Appendix."* Copies of said notice, to be furnished by the Regional Director for Region 21, shall, after being duly signed by Respondent, be posted immediately upon receipt thereof, and be maintained by it for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to the insure that said notices are not altered, defaced, or covered by any other material.

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*In the event that this Recommended Order be adopted by the Board, the words "a Decision and Order" shall be substituted for the words "the Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order be enforced by a decree of a United States Court of Appeals, the words "a Decree of the United States Court of Appeals, Enforcing an Order" shall be substituted for the words "a Decision and Order."

(d) Notify the Regional Director for Region 21, in writing, within 20 days from the date of the receipt of this Decision and Recommended Order, what steps it has taken to comply herewith.[6]

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT refuse to recognize Roofers Local 36, United Slate, Tile and Composition Roofers, Damp and Waterproof Workers Association as the representative of our roofing employees.

WE WILL honor and sign the contract executed between Roofing Contractors' Association of Southern California, Inc. and Roofers Local 36, United Slate, Tile and Composition Roofers, Damp and Waterproof Workers Association for the period August 15, 1963, through August 15, 1967, covering a unit of all roofers employed by members of said Association.

WE WILL make whole the appropriate sources for any unpaid fringe benefits provided in the above contract.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the above-named or any other labor organization, to bargain collectively through representatives

[6] In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith."

of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment.

JOSEPH T. STRONG
D/B/A STRONG ROOFING & INSULATING CO.,
Employer.

Dated_____ By_____
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 849 South Broadway, Los Angeles, California, Telephone No. 688-5204, if they have any question concerning this notice or compliance with its provisions.

APPENDIX D

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Secs. 151, *et seq.*) are as follows:

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

SEC. 8(a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * * *

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

* * * * * * *

Sec. 10 * * *

(c) * * * If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring

such person to cease and desist from such unfair labor practice and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: * * *

* * * * *

The relevant provision of the Labor-Management Relations Act (61 Stat. 136, 29 U.S.C. 141, *et seq.*) is as follows:

Sec. 301. (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

* * * * *

U.S. GOVERNMENT PRINTING OFFICE: 1960

IN THE

Supreme Court of the United States

October Term, 1968

No. [redacted]61

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

JOSEPH T. STRONG, d/b/a STRONG ROOFING & INSULATING CO.,

Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION

WILLIAM B. CARMAN

CHARLES G. BAKALY, JR.
433 South Spring Street
Los Angeles, California

Counsel for Respondent

Of Counsel:

O'MELVENY & MYERS
433 South Spring Street
Los Angeles, California

Jeffries Banknote Company, Los Angeles — 746-1611

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IN THE

Supreme Court of the United States

October Term, 1967

No. 1339

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

JOSEPH T. STRONG, d/b/a STRONG ROOFING & INSULATING CO.,

Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals (Petn. pp. 13-21)[1] is reported at 386 F.2d 929. The decision and order of the National Labor Relations Board (Petn. pp. 27-42) are reported at 152 N.L.R.B. 9.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTION PRESENTED

Where the National Labor Relations Board has found that an employer committed an unfair labor practice by

[1] "Petn." refers to the Petition for Certiorari herein; other references herein are as set forth in Petn. p. 3 n. 2.

refusing to execute a collective bargaining agreement negotiated on his behalf by a multi-employer group, and has ordered the employer to execute and honor the agreement, thus binding him to its terms, is not its additional requirement that the employer perform the agreement by paying certain fringe benefits provided therein beyond its jurisdiction, and an infringement of the exclusive contract-enforcement power of the courts?

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151 *et seq.*) are set forth in the Petition at pp. 43-44.

ADDITIONAL STATEMENT

Petitioner's statement (Petn. p. 2 *et seq.*) is generally accurate but requires some amplification and emendation.

Respondent Strong operates a small individual business as a roofing contractor, strictly limited as to locale and character (Tr. 58-59). His annual purchases of supplies and materials did not exceed $50,000; he had but a handful of employees, most part-time; his wife performed the necessary functions of office manager and the handling of administrative details (Petn. pp. 28, 35; R. 15-16; Tr. 84, 88, 90; G.C. Exh. 5(a) and (b), Tr. 39).

Respondent's purported termination of the collective bargaining agreement as to him by his letter of August 20, 1963, was in the honest belief that he had the right to do so in accordance with his (erroneous) interpretation of Article X of the agreement, and the Board so found (Petn. pp. 33-34; R. Exh. 3, Tr. 66; R. 15; Tr. 66,

67, 68, 70).[2] Nothing at all occurred from that time to disabuse him of that belief until the charge herein was filed on June 3, 1964, almost ten months later. To the contrary, his bond deposit required under the contract was returned to him (Petn. p. 34; R. 16; Tr. 23, 70). His application to change his membership in the Association from "regular" to "associate" was approved, retroactive to October 1, 1963, and credit given him for the difference in dues (Petn. p. 34; R. 16; G.C. Exh. 3, Tr. 15; R. Exh. 1, Tr. 25; Tr. 14-15, 30).[3] Strong's payments of fringe benefits for September and October 1963 was in accordance with his belief that he could terminate but only on 60 days' notice (Petn. p. 34; Tr. 68-70, 77). In none of the three subsequent contracts which the Union had with Mr. or Mrs. Strong was there any indication that the Union considered Strong legally bound to execute or honor the agreement (R. 16; Tr. 52, 72-73, 91, 93) and the only fair inference from the testimony is that Strong believed the Union's request that he sign was in effect a request to him to return to a union-shop basis which he honestly thought he had legally and effectively terminated.

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[2] Respondent had previously (January 20, 1962) mailed a somewhat similar termination notice under an analogous provision of the 1960-1963 collective bargaining agreement under the same misapprehension as to its interpretation (Petn. p. 32; R. Exh. 2; Tr. 65; T.X. Exh. 1, Tr. 71; Tr. 63, 68-70, 79). However, not receiving any response, he continued to comply with that contract (Tr. 65-66).

[3] As set forth in the Petition, associate members are not represented for bargaining purposes by the Association and are not covered by the collective bargaining agreement (Petn. p. 4, n. 6; Tr. 25).

There was no charge or evidence of any antiunion bias or animus on Strong's part. On the contrary, relations were particularly cordial (R. 16; Tr. 91, 92-93). Strong, as a small operator in competition with other nonunion shops, was in an economic bind and took what he believed to be the proper legal steps to get out of it (R. 16; Tr. 52, 73). He was wrong in his interpretation but his good faith is not questioned (Petn. p. 34; R. 15, 16; Tr. 68).

REASONS FOR DENYING THE WRIT

1. The decision of the Court below was correct. The Board's power is to adjudicate and remedy unfair labor practices; it has not been entrusted by Congress with the jurisdiction to compel compliance with contracts. H. R. Conf. Rep. No. 510, 80th Cong., 1st Sess. p. 42; see *Vaca v. Sipes*, 386 U.S. 171, 187 (1967); *Dowd Box Co. v. Courtney*, 368 U.S. 502, 509, 510-511 (1962); *Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp.*, 348 U.S. 437, 443-444 n. 2 (1955). That jurisdiction rests only in the federal or state courts. 29 U.S.C. Sec. 185; Petn. p. 44; *Cheney California Lumber Co. v. National Labor Relations Board*, 319 F.2d 375, 378 (C.A. 9, 1963).

The unfair labor practice here found was in the employer's refusal, based on a good faith but erroneous conception of his rights, to execute the contract negotiated with the Union by the multi-employer bargaining unit and to bind himself to its terms. By ordering him to execute and honor the agreement, both the Board and the Court of Appeals have fully remedied that unfair

labor practice since by compliance, the employer will concededly be bound by all of the terms of the contract just as if he had signed it in the first instance. Indeed, since his withdrawal from the multiemployer bargaining agreement was subsequent to the effective date of the 1963-1967 contract, he was bound by its terms whether he signed it or not (G.C. Exh. 2, p. 9, quoted at Petn. p. 3, n. 4). If there is a dispute over whether petitioner has complied with the contract after execution, such rights as the Union or the employees have thereunder, whatever they may be, can be established in the only proper forum for their adjudication — the courts.

That portion of the Board's order which the Court of Appeals refused to enforce is simply an attempt to do indirectly what the Board has itself held it cannot do directly.[4] Under the guise of an exercise of its remedial powers, it is in effect specifically enforcing provisions of the contract in an administrative proceeding, purporting to confine the courts to a limited review thereof and subjecting the employer to possible contempt proceedings for a simple breach of contract. This not only goes far beyond the remedy necessary to correct the unfair labor practice, i.e., the placing of the parties in the *status quo ante* by submitting the employer to the binding effect of the contract; it is the exercise of a jurisdiction the Board does not possess. See *Sinclair Refining Co. v. N.L.R.B.*,

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[4] "The Board is not the proper forum for parties seeking to remedy alleged breach of contract or to obtain specific enforcement of its terms." *Re United Telephone Co. of the West*, 112 N.L.R.B. 779, 782 (1955). And see *Re Hyde*, 145 N.L.R.B. 1252, enforced sub nom. *National Labor Relations Board v. Hyde*, 339 F.2d 568 (C.A. 9, 1964).

306 F.2d 569, 575, 576-77 (C.A. 5 1962); *United Steelworkers v. American International Aluminum Corp.*, 334 F.2d 147, 152 (C.A. 5 1964). The Court of Appeals properly refused to enforce that portion of the Board's order requiring payment of fringe benefits.[5]

2. In the present circumstances of this case it would be most proper for this Court to exercise its discretion to deny the writ. It has already denied certiorari in this case to the employer on an issue of at least equal importance to that here posed by the Board — the proper interpretation of the time limits provisions contained in Section 10(b) of the Act (20 U.S.C. § 160(b)).[6] As already pointed out, when the employer complies with the decree heretofore entered by the Court of Appeals, as he will, the Union will have all of the rights and remedies under the contract it would have if the unfair labor practice had not been committed. It seems harsh in such a situation to subject this small enterpreneur, whose only fault was ignorance resulting in an honest mistake as to his

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[5] Our argument is in no way inconsistent with judicial statements that the Board has jurisdiction to find an unfair labor practice even though the act charged is also a breach of contract remediable by the courts, e.g. *Smith v. Evening News Assn.*, 371 U.S. 195, 197 (1962). Nor is it in any way inconsistent with the decision of this Court in *National Labor Relations Board v. C & C Plywood Corp.*, 385 U.S. 421 (1967). We do not contend that the Board does not have full and exclusive power to determine whether an act is an unfair labor practice and in its exercise thereof to determine, as held in *Plywood*, whether contractual terms interpose a valid defense to such a charge. But here the terms of the contract have nothing to do with the unfair labor practice charged and found, i.e., the refusal to sign the contract regardless of its terms.

[6] Case No. 190 this term, 390 U.S. (Prelim.) 920; Petn. p. 2, n. 1.

rights and duties, to the additional heavy burden of expense he cannot afford for the sole purpose of giving the Board an opportunity to attempt to vindicate an abstract principle.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the petition for a writ of certiorari should be denied.

WILLIAM B. CARMAN
CHARLES G. BAKALY, JR.

Counsel for Respondent.

Of Counsel:

O'MELVENY & MYERS
May, 1968.

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In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 61

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

JOSEPH T. STRONG, d/b/a STRONG ROOFING AND INSULATING CO.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the court of appeals (R. 124–131) is reported at 386 F. 2d 929. The decision and order of the National Labor Relations Board (R. 108–123) are reported at 162 NLRB 9.

JURISDICTION

The decision of the court of appeals was entered on July 14, 1967 (R. 124). The Board's timely petition for rehearing *en banc* was denied on January 18, 1968 (R. 131), and a decree was entered on February 19, 1968 (R. 132–135). The petition for a writ of

certiorari was filed on April 17, 1968, and was granted on May 27, 1968 (R. 136). The jurisdiction of the Court rests on 28 U.S.C. 1254(1), and Section 10(e) of the National Labor Relations Act, 29 U.S.C. 160(e).

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*), and of the Labor Management Relations Act (61 Stat. 136, 29 U.S.C. 141, *et seq.*) are set forth in the Appendix, *infra*, pp. 19–20.

QUESTION PRESENTED

Whether the National Labor Relations Board, upon finding that an employer committed an unfair labor practice by refusing to execute a collective bargaining agreement negotiated on his behalf by a multi-employer group, may require the employer retroactively to pay certain benefits that he would have paid had he signed the contract.

STATEMENT

Respondent Joseph T. Strong is engaged in the roofing of residential and commercial buildings (R. 111; 24). As a regular member of the Roofing Contractors Association of Southern California, Strong was bound by any collective bargaining agreement between the Association and the Union,[1] which represented a multi-employer bargaining unit comprised of the employees of the Association's regular mem-

[1] Roofers Local 36, United Slate, Tile and Composition Roofers, Damp and Waterproof Workers Association.

bers (R. 112–113; 7, 20–21).[3] On August 14, 1963, the Association and the Union agreed upon the terms of a new four-year contract, to be effective from August 15, 1963, to August 15, 1967 (R. 111–112; 9, 19). Among other things, the contract required each employer to make certain payments to various union trust funds (a health and welfare fund, a fund for vacation benefits, and an apprenticeship and training fund); part of these fringe-benefit payments were deducted from the employees' wages, and the remainder was contributed by the employer, based on the hours worked by his employees (R. 63–70).

On August 20, 1963, Strong wrote to a grievance board composed of contractor and union representatives, requesting termination of the contract and the refund of his security deposit (R. 114–115; 14, 24–25).[3] In September 1963, Strong asked the Association to change his status from that of a regular member to that of an associate contractor (R. 115; 8).[4] He con-

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[3] The Association's By-laws provide (R. 35):

> Each and every regular member shall recognize the Association, its counsel, and each of its duly selected labor committees as the member's exclusive bargaining representatives for negotiating, reaching, agreeing to abide by, and/or signing any and all collective bargaining agreements with labor unions. * * * Any such labor contract negotiated by the Committee shall be binding upon the regular members of this Association separately and collectively.

[3] The agreement required that regular members deposit $400 with the Association to insure payment of wages and fringe benefits due under the contract (R. 115; 8, 14, 45).

[4] Under the By-laws of the Association, associate contractors are members who operate non-union shops and are not covered by the Association's collective bargaining agreement (R. 112; 15, 35).

tinued, however, to pay regular members' dues until December of that year, and also paid fringe benefits in September and October of 1963 (R. 115; 8, 28, 31-32, 36-37). On October 18, 1963, a Union representative asked Strong's wife, who managed his office, to have Strong sign the new Association contract (R. 116; 32). Mrs. Strong stated that her husband had withdrawn from the Association and would not sign (*ibid*). In December 1963 and in April 1964 Strong and his wife again rejected Union requests that he sign the contract (R. 116-23, 27-28).

On June 3, 1964, the Union filed unfair labor practice charges with the Board, alleging that Strong's refusal to sign the new Association contract constituted a refusal to bargain, in violation of Section 8(a)(5) and (1) of the Act. A complaint was issued on these charges. (R. 110.)

Although it recognized that as a general matter, employers may withdraw from multi-employer bargaining units, the Board found that in this case Strong had not made a timely withdrawal, but had continued as a member of the Association while the 1963 agreement was being negotiated (R. 117). It accordingly found that his subsequent withdrawal was not effective to relieve him of the duty to sign. Thus it found that his refusal, on and after April 1964, to sign and honor the 1963 Association agreement constituted a refusal to bargain with the Union, in violation of Section 8(a)(5) and (1) of the Act (R. 116-118). The Board ordered Strong to cease and desist from the unfair labor practices found, to execute and honor the

agreement, to pay to the appropriate source any fringe benefits provided for in the contract, and to post appropriate notices (R. 118–121).

The court of appeals affirmed the Board's finding of an unfair labor practice and enforced its order, except for the requirement that Strong retroactively pay the fringe benefits provided for in the contract (R. 124–131). As to that provision, the court reasoned (R. 130):

> In general, the Board has no power to adjudicate contractual disputes. * * * Here the unfair labor practice was the refusal to bargain by refusing to execute the contract. The order of the Board requiring the payment of fringe benefits to the appropriate source is an order to respondent to carry out provisions of the contract and is beyond the power of the Board. * * *

We petitioned for certiorari in view of the conflict with decisions of other courts of appeals, which held that the Board may direct the retroactive payment of benefits for which a collective bargaining agreement provides. See *National Labor Relations Board* v. *George E. Light Boat Storage Co.*, 373 F. 2d 762, 767–768 (C.A. 5); *National Labor Relations Board* v. *Huttig Sash and Door Co.*, 362 F. 2d 217 (C.A. 4); *National Labor Relations Board* v. *Sheridan Creations, Inc.*, 384 F. 2d 696 (C.A. 2). This Court granted the writ on May 27, 1968 (R. 136).

SUMMARY OF ARGUMENT

The National Labor Relations Act provides the Board with authority, upon finding an unfair labor

practice, to direct such relief as is necessary to restore "the situation, as nearly as possible, to that which would have obtained but for the" violation. *Phelps-Dodge Corp. v. National Labor Relations Board*, 313 U.S. 177, 194. The *status quo ante* cannot effectively be restored in a case such as this unless the Board may direct the restoration of fringe benefits past due under a contract an employer unlawfully refused to execute. Otherwise the employer gains a windfall from his unlawful act.

The fact that the fringe benefits are derived from a collective bargaining agreement does not divest the Board of authority to direct retroactive payment. Although the Board is not a proper forum for enforcing a collective bargaining agreement as such, once an unfair labor practice deprives employees of some of the benefits of the contract, the Board may refer to the terms of the agreement for the proper measure of relief.

The public interest in deterring violations of the labor statute requires that the Board have this authority. The 1947 Congress, in adopting section 301 of the Labor Management Relations Act, expressly recognized that either the courts or the Board would be a proper forum for remedying an action that was both an unfair practice and a violation of a collective bargaining agreement. Four decisions of this Court also recognize that the two remedies are cumulative or equally available alternatives. The principle applies here, and the court of appeals should be directed to enforce the Board's order in its entirety.

ARGUMENT

THE BOARD'S POWER TO REMEDY UNFAIR LABOR PRACTICES ALLOWS IT TO DIRECT THE RETROACTIVE PAYMENT OF FRINGE BENEFITS THAT WOULD HAVE BECOME DUE UNDER THE COLLECTIVE BARGAINING AGREEMENT THAT RESPONDENT UNLAWFULLY REFUSED TO EXECUTE AND HONOR

The court below sustained the Board's finding that respondent violated his duty to bargain, imposed by Section 8(a) (5) and (1) of the National Labor Relations Act, when he refused to sign and honor the 1963 agreement that the Association had negotiated for the multi-employer bargaining unit to which respondent then belonged.[5] Once the violation was found, the Board had the authority—and the duty—to fashion a remedy that effectively would undo the wrong. The only issue before this Court is the propriety of the remedy the Board chose here for the purpose of rectifying respondent's refusal to sign the agreement.

1. Section 10(c) of the Act empowers the Board, upon finding an unfair labor practice, to issue an order requiring the guilty party to cease and desist from the illegal conduct and—

> to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

The remedy should restore "the situation, as nearly as possible, to that which would have obtained but

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[5] This Court denied respondent's petition for certiorari based on that finding. *Strong* v. *National Labor Relations Board*, 390 U.S. 920. The only question presented was whether the Board's finding was barred by the 6 month limitations period of Section 10(b) of the Act, 29 U.S.C. 160(b).

for the [unfair labor practices]." *Phelps-Dodge Corp.* v. *National Labor Relations Board*, 313 U.S. 177, 194. An unfair labor practice, including a refusal to bargain, may take an infinite variety of forms and be equally varied in its effects. In a line of cases dating virtually to the inception of the modern Labor Act, this Court has continually emphasized the breadth of the Board's authority to mold a remedy to fit a particular violation and undo its ill effects.[6] What the Board ordains will not be set aside "unless it can be shown that the order is a patent attempt to achieve ends other than those which can fairly be said to

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[6] See, *e.g.*, *Fibreboard Corp.* v. *National Labor Relations Board*, 379 U.S. 203, 216 (employer ordered to resume maintenance work "contracted out" without bargaining with the union, and to reinstate affected employees with back pay); *National Labor Relations Board* v. *Newsport News Shipbuilding & Dry Dock Co.*, 308 U.S. 241, 250 (disestablishment ordered of labor organization in whose formation employer had unlawfully interfered); *National Licorice Co.* v. *National Labor Relations Board*, 309 U.S. 350, 361–366 (employer ordered to cease giving effect to individual contracts secured through unfair labor practices, and to notify employees they were released from obligations imposed by those contracts); *Virginia Electric Co.* v. *National Labor Relations Board*, 319 U.S. 533, 538–544 (dues paid to employer-dominated labor organization reimbursed to employees from whose wages they had been withheld under closed-shop, check-off arrangement); *Int'l Ladies' Garment Workers' Union* v. *National Labor Relations Board*, 366 U.S. 731, 735, 736, 739–740 (employer ordered to withdraw recognition from union that lacked majority support when originally recognized, and to cease giving effect to collective bargaining agreement executed with that union after it had secured majority); *Franks Brothers* v. *National Labor Relations Board*, 321 U.S. 702 (employer ordered to bargain with union, notwithstanding its loss of majority, where such loss was attributable to the employer's unfair labor practices).

effectuate the polices of the Act." *Fibreboard Corp. v. National Labor Relations Board*, 379 U.S. 203, 216, quoting from *Virginia Electric Co. v. National Labor Relations Board*, 319 U.S. 533, 540.

In this case, effective relief had to include—as the Board's order did—a direction that respondent execute and honor the 1963 Association contract (R. 120, par. 2(a)). That requirement insured respondent's employees all the benefits of the contract, including the fringe benefits, for the last 29 months of its four-year term.[7] The cease and desist portion of the order (R. 120, par. (b)) guards against a future refusal on respondent's part to honor its duties under the Labor Act. But, if the remedy must stop here, as the court of appeals held, respondent would reap a substantial advantage from his unlawful refusal to bargain. He would not have avoided paying the fringe benefits for the first year and a half of the contract term. By requiring respondent to "[p]ay to the appropriate source any fringe benefits provided for in the [Association] contract" (R. 120, par. 2(b)), the Board sought to deprive respondent of such a windfall; no other form of order could result in a full "restoration of the situation as nearly as possible to that which would have obtained" if respondent had signed the agreement when and as the law required.

2. There is nothing in the nature of fringe benefits—either generally or the specific vacation, welfare, and

[7] The Board's decision and order issued on April 19, 1965 (R. 1). The contract, by its terms, was due to expire on August 15, 1967 (R. 62, Art. X).

apprenticeship programs at issue here—that takes them beyond the ambit of Board orders. Section 10(c) of the Act, for example, expressly speaks of the Board taking "such affirmative action including reinstatement of employees *with or without back pay*, as will effectuate the policies of this Act * * *." (Emphasis supplied.) It surely could not be doubted that if respondent had unlawfully discharged employees, the Board could have directed him to rehire them, and pay them full back wages, including an amount intended to compensate for the loss of fringe benefits. The courts have indeed consistently enforced such orders.[8]

The only possible basis for declining to enforce the order in this case is that the fringe benefits are required by a collective bargaining agreement. And that was the view of the court of appeals. It said that the Board's order "requiring the payment of fringe benefits * * * is an order to respondent to carry out provisions of the contract and is beyond the power of the Board" (R. 130). Thus it reasoned that a private suit for violation of the collective bargaining agreement under Section 301 of the Labor Management Relations Act is the sole method of recouping the lost fringe

[8] See, *e.g.*, *National Labor Relations Board* v. *George E. Light Boat Storage Co.*, 373 F. 2d 762, 767–768 (C.A. 5); *National Labor Relations Board* v. *Huttig Sash and Door Co.*, 362 F. 2d 217, 219–220 (C.A. 4), enforcing 151 NLRB 470, 475; *National Labor Relations Board* v. *M & M Oldsmobile, Inc.*, 377 F. 2d 712 (C.A. 2), enforcing 156 NLRB 903, 917; *National Labor Relations Board* v. *Huttig Sash & Door Co.*, 377 F. 2d 964 (C.A. 8), enforcing 154 NLRB 811, 812. See also *National Labor Relations Board* v. *Sheridan Creations, Inc.*, 384 F. 2d 696 (C.A. 2).

benefits, and that the Board has no jurisdiction in the matter.

The Board, to be sure, does not have plenary jurisdiction over breaches of collective bargaining agreements.* If the matter complained of is a breach of a bargaining agreement and nothing more, the remedy lies exclusively through a civil suit in the courts. But if the breach of the agreement is itself an unfair labor practice, or if an unfair labor practice has the result of depriving employees of some of the benefits of the agreement (as happened here), the Board's remedial powers must allow it to take action that restores the benefits of the contract and therefore has the practical effect of enforcing its terms.

The national labor statutes are designed "to provide a means by which agreement may be reached with respect to" wages, hours, and working conditions. *NLRB* v. *C & C Plywood Corp.*, 385 U.S. 421, 427, quoting from *Terminal Railroad Assn.* v. *Brotherhood of Railroad Trainmen*, 318 U.S. 1, 6. Collective bargaining is the means provided, and the Act and Board are designed to function in a manner that encourages free bargaining and forestalls strife. The Board's

* In 1947, Congress rejected a proposal which would have made breach of a collective bargaining agreement as such an unfair labor practice, and provided instead a judicial remedy under Section 301. H. Conf. Rep. No. 510, 80th Cong., 1st Sess., 41–42, 1 Leg. Hist. of the Labor-Management Relations Act, 1947 (G.P.O. 1948) 545–546. The House Conference Report states that "[o]nce parties have made a collective bargaining contract the enforcement of that contract should be left to the usual processes of the law and not to the National Labor Relations Board," *id.*, at 42, 546; see also 93 Cong. Rec. 6443, 2 Leg. Hist. 1539.

power to compel restoration of the *status quo ante* is an essential ingredient of this concept. If the Board is limited to prospective orders, employers have every incentive to avoid bargaining and ignore contracts. This is particularly so here, where the Board is told that it may remedy only prospectively an unlawful refusal to execute a collective bargaining agreement. As the Fifth Circuit said in upholding the Board's authority to compel the restoration of fringe benefits past due under a contract an employer had unlawfully repudiated (*National Labor Relations Board* v. *George E. Light Boat Storage Co.*, 373 F. 2d 762, 768):

> A simple order to bargain in good faith would not be sufficient. To allow an employer unlawfully to repudiate a collective bargaining agreement at the small cost of being required, sometime in the future, to sit down and bargain with the union would encourage such violations of the Act. * * * The temptation to violate the Act in a situation where the employer would have everything to gain and nothing to lose could be overwhelming.

And the courts, until now, have agreed that the Board has full power to direct the restoration of amounts and benefits due under a contract, if the relief is in other respects appropriate.[10]

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[10] See, *e.g.*, *National Labor Relations Board* v. *Central Illinois Public Service Co.*, 324 F. 2d 916, 919 (C.A. 7); *National Labor Relations Board* v. *Scam Instrument Corp.* (C.A. 7), May 15, 1968, 68 LRRM 2280, 2281, 2282; *National Labor Relations Board* v. *United Nuclear Corp.*, 381 F. 2d 972, 979–980 (C.A. 10); *Overnite Transportation Co.* v. *National Labor Relations Board*, 372 F. 2d 765, 770 (C.A. 4), certiorari denied, October 9, 1967, 389 U.S. 838.

3. The statute and the legislative history demonstrate that the Board has jurisdiction to direct the retroactive payment of fringe benefits in the present circumstances. Section 10(a) of the National Labor Relations Act provides that the Board's power to remedy unfair labor practices "shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law or otherwise." This provision makes it plain that Section 301 does not preclude the Board from providing an additional remedy under the National Labor Relations Act, if the conduct involved also amounts to an unfair labor practice. So long as there has been an unfair labor practice, the presence of a contract does not restrict the Board's powers. To the extent that the terms of the contract define the impact of an unlawful refusal to execute it, a Board order and a suit under Section 301 are equally available remedies. Indeed, Congress had no fear that Section 301 would limit the Board's powers. On the contrary, it was thought necessary to emphasize that the presence of an unfair labor practice would not limit the courts' powers under Section 301. Thus, it was said in the House Conference Report accompanying the 1947 Act (H. Conf. Rep. No. 510, 80th Cong., 1st Sess., 52; 1 Leg. Hist. of the Labor Management Relations Act, 1947 (G.P.O. 1948) 556):

> By retaining the language which provides the Board's power under section 10 shall not be affected by other means of adjustment, the conference agreement makes clear that, when

two remedies exist, one before the Board and one before the courts, the remedy before the Board shall be in addition to, and not in lieu of, other remedies.

This existence of concurrent remedies is but a recognition of the different functions served by suits under Section 301 and Board orders in unfair labor practice proceedings. Section 301 was designed to provide the "necessary legal remedies" to protect the parties' rights under a collective bargaining agreement (*Textile Workers* v. *Lincoln Mills*, 353 U.S. 448, 449–456). The Board's primary concern is not the wrong done the individual, but the "public interest in effectuating the policies of the federal labor laws * * *." *Vaca* v. *Sipes*, 386 U.S. 171, 182, n. 8; see also *National Labor Relations Board* v. *Acme Industrial Co.*, 385 U.S. 432, 436–437.

When an unfair labor practice is committed, the public interest in the continuing effectiveness of the national labor policy requires the eradication of the unlawful act and all its progeny. Of course the remedy will almost always aid private parties and sometimes, as here, the private benefits will be those required by a contract. When the unfair practice is an unlawful refusal to sign and honor a contract, the terms of the contract provide the most accurate measure of the effect of the illegal act. And the public interest in curing and deterring unlawful labor practices can not be implemented unless the relief provides the employees with the full measure of the contractual rights of which they have been deprived.

4. On four separate occasions this Court has made clear that Section 301 does not foreclose the Board from dealing with subjects that are also covered by contracts. In the first three cases, the contentions were the opposite of those presented here—that Section 301 does not give the courts jurisdiction of disputes that might also be termed unfair labor practices. The Court disagreed, emphasizing that the remedies were cumulative, and not mutually exclusive. In *Local 174, Teamsters* v. *Lucas Flour Co.*, 369 U.S. 95, the Court commented (p. 101, n. 9):

> It is, of course, true that conduct which is a violation of a contractual obligation may also be conduct constituting an unfair labor practice, and what has been said is not to imply that enforcement by a court of a contract obligation affects the jurisdiction of the N.L.R.B. to remedy unfair labor practices, as such. * * *

The point was repeated in *Smith* v. *Evening News Assn.*, 371 U.S. 195, 197:

> In *Lucas Flour* as well as in *Atkinson* [v. *Sinclair Refining Co.*, 370 U.S. 238], the Court expressly refused to apply the preemption doctrine of the *Garmon* case; and we likewise reject that doctrine here where the alleged conduct of the employer, not only arguably, but concededly, is an unfair labor practice within the jurisdiction of the National Labor Relations Board. The authority of the Board to deal with an unfair labor practice which also violates a collective bargaining contract is not displaced

> by § 301, but it is not exclusive and does not destroy the jurisdiction of the court in suits under § 301. * * *

It was made for a third time in *Carey* v. *Westinghouse Corp.*, 375 U.S. 261, 268.

Then in *National Labor Relations Board* v. *C & C Plywood Corp.*, 385 U.S. 421, the Court rejected the same idea as the Ninth Circuit advanced here—that the Board's domain ends where the courts', under Section 301, begins. The employer had instituted a generalized incentive pay system during the term of a collective agreement, without prior consultation with the union. The question whether this unilateral action violated Sections 8(a)(1) and (5) turned on whether it was authorized by a provision in the agreement permitting the setting of individual premium rates. The Ninth Circuit declined to enforce a Labor Board finding that the pay change was an unfair labor practice. On certiorari, this Court reversed, and rejected the theory that the Board enters the forbidden area of contract enforcement where it construes a contract provision in order to determine whether an unfair labor practice has been committed.

In *C & C Plywood*, the employer relied on the contract as a defense—the claim was that the contract authorized the unilateral raise. Here the Board referred to the contract for the proper measure of the remedy. But the governing principle is the same. In *C & C Plywood* the Board could not execute its responsibilities to determine whether there was an unfair practice unless it first construed the contract. Here the

Board could not provide a full remedy for the respondent's unlawful conduct without reference to the contract. Without restoration of the fringe benefits, the remedy would have been incomplete and inadequate. Reference to the contract was the only way the Board could (385 U.S. at 428) "enforce a statutory right which Congress considered necessary to allow labor and management to get on with the process of reaching fair terms and conditions of employment—'to provide a means by which agreement may be reached'."

Here, as in *C & C Plywood*, the contrary view of the court below would require a bifurcated proceeding. The Board would first determine the existence of a unfair labor practice. Then, after all avenues of administrative and judicial review of the unfair labor practice finding had been exhausted, the aggrieved party would have to resort to a state or federal court in order to obtain meaningful relief for the violation found. Even then, the employees would by no means be certain of relief, since the courts could well hold that there was no judicially enforceable obligation for the period when the employer was unlawfully refusing to sign, since, under controlling contract principles, there may not have been a contract until the employer was directed to sign the agreement, or in fact did so. Moreover, such a procedure, which might take several years, would delay vindication of statutory rights, and would be much more expensive than a single Board proceeding. "Congress cannot have intended to place such obstacles in the way of the

Board's effective enforcement of statutory duties." *C. & C. Plywood, supra*, 385 U.S. at 429, 430.[11]

CONCLUSION

The judgment of the court of appeals should be reversed, and the case should be remanded to that court with instructions to enforce the Board's order in its entirety.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

HARRIS WEINSTEIN,
Assistant to the Solicitor General.

ARNOLD ORDMAN,
General Counsel,

DOMINICK L. MANOLI,
Associate General General,

NORTON J. COMB,
Assistant General Counsel,

JOHN I. TAYLOR,
Attorney,
National Labor Relations Board.

JULY 1968.

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[11] The cases relied on by the court below (App. A, *infra*, p. 21) do not support its position. *George E. Lightboat, supra*, holds precisely to the contrary. And the Board's decision in *National Labor Relations Board* v. *Hyde*, 339 F. 2d 568, 572 (C.A. 9), enforcing 145 NLRB 1252, in which it rejected the Examiner's recommendation that the employer be ordered not only to "honor" but also to "comply" with the terms of the contract, is not inconsistent with its remedy in this case; the breadth of the Examiner's proposed order in *Hyde* would have required the Board to oversee the entire contract and determine whether the employer's subsequent performance satisfied all of its terms. See *George E. Lightboat, supra*, 373 F. 2d at 768, 769; see, also *Sheridan Creations, Inc., supra.*

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519; 29 U.S.C., Secs. 151, *et seq.*) are as follows:

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

SEC. 8(a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * *

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

* * * * *

SEC. 10 * * *

(c) * * * If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such

person to cease and desist from such unfair labor practice and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act:

* * *

The relevant provision of the Labor-Management Relations Act (61 Stat. 136, 29 U.S.C. 141, *et seq.*) is as follows:

Sec. 301. (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

* * *

U.S. GOVERNMENT PRINTING OFFICE: 1960

No. 61

IN THE

Supreme Court of the United States

October Term, 1968

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

JOSEPH T. STRONG, d/b/a STRONG ROOFING AND INSULATING COMPANY

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR JOSEPH T. STRONG

WILLIAM B. CARMAN
CHARLES G. BAKALY, JR.
433 South Spring Street
Los Angeles, California 90013
Counsel for Joseph T. Strong

Of Counsel

O'MELVENY & MYERS
433 South Spring Street
Los Angeles, California 90013

Jeffries Banknote Company, Los Angeles — 746-1611

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BRIEF FOR JOSEPH T. STRONG

OPINIONS BELOW

The opinion of the Court of Appeals (R. 124-131) is reported at 386 F.2d 929. The decision and order of the National Labor Relations Board (R. 108-123) are reported at 152 NLRB 9.

JURISDICTION

The jurisdictional requisites are adequately set forth in the brief for the National Labor Relations Board. (Br. pp. 1-2).

QUESTION PRESENTED

Where the National Labor Relations Board has found that an employer committed an unfair labor practice by refusing to execute a collective bargaining agreement negotiated on his behalf by a multi-employer group and binding upon him by virtue of the authority vested in such group by him, and has ordered the employer to execute the agreement, is not its additional requirement that the employer perform the agreement by paying certain fringe benefits provided therein beyond its jurisdiction, and an infringement on the policy favoring enforcement of contracts through arbitration?

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*) (hereinafter referred to as the "Act") are set forth in the Board's brief at pp. 19-20.

ADDITIONAL STATEMENT

The Board's statement (Br. p. 2, *et seq.*) is generally accurate, but requires some amplification and emendation.

Respondent Strong operates a small individual business as a roofing contractor, strictly limited as to locale and character. (R. 24). His annual purchases of supplies and materials did not exceed $50,000; he had but a handful of employees, most part-time; his wife performed the necessary functions of office manager and the handling of administrative details. (R. 30-32, 36-37).

Respondent's purported termination of the collective bargaining agreement as to him by his letter of August 20, 1963, was in the honest belief that he had the right to do so in accordance with his (erroneous) interpretation of Article X of the Agreement, and the Board so found. (R. 115-16, 24-27, 107).[1] Nothing at all occurred at that time to disabuse him of that belief until the charge herein was filed on June 3, 1964, almost ten months later. To the contrary, his bond deposit required under the contract was returned to him. (R. 116, 14, 27). His application to change his membership in the association from "regular" to "associate" was approved, retroactive to October 1, 1963, and credit given him for the difference in dues. (R. 116, 8, 15-16, 18).[2] Strong's payments of fringe benefits for September and October, 1963, were in accordance with his belief that he could terminate but only on 60 days' notice. (R. 115, 26-27). The only fair inference from the testimony is that Strong believed the Union's request that he sign the agreement was in effect a request to him to return to a union-shop basis which he honestly thought he had legally and effectively terminated. (R. 23, 27-28, 32-33).

There was no charge or evidence of any anti-union bias or animus on Strong's part. On the contrary, relations

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[1] Respondent had previously (January 30, 1962) mailed a somewhat similar termination notice under an analogous provision of the 1960-1963 collective bargaining agreement under the same misapprehension as to its interpretation. (R. 113-14, 25-27).

[2] Associate members are not represented for bargaining purposes by the association, and are not covered by the collective bargaining agreement. (R. 15-16).

were particularly cordial. (R. 32-33). Strong, as a small operator in competition with other non-union shops, was in an economic bind and took what he believed to be the proper legal steps to get out of it. (R. 23, 27). He was wrong in his interpretation but his good faith is not in question.

SUMMARY OF ARGUMENT

The Board is not empowered to interpret or apply the provisions of collective bargaining agreements. *NLRB v. American National Insurance Co.*, 343 U.S. 395, 404. The legislative history and rationale of §301 of the Act plainly indicate Congress' intention to channel disputes over the performance of labor agreements to arbitration or the courts, rather than to the Board. *Charles Dowd Box Co. v. Courtney*, 368 U.S. 502, 510-13; *Textile Workers v. Lincoln Mills*, 353 U.S. 448, 449-56. The courts, as well as the Board itself, have uniformly recognized this limitation on the Board's jurisdiction.

Although the Board's power to remedy unfair labor practices is admittedly broad, it may not be employed to grant specific enforcement of an agreement, as the Board seeks to do here. Fringe benefits arise solely under an agreement. They do not arise from the condition of employment per se, nor are they statutory rights. The failure to pay fringe benefits cannot support an unfair labor practice charge, but only an action for breach of contract. By the same token, the requirement of payment cannot be treated as part of the remedy for an unrelated unfair labor practice. The appropriate method for the settlement of this contractual dispute is the grievance-

arbitration procedure set out clearly in the agreement itself. The Board must be prevented, as the courts have been, from defeating the intention of the parties to establish suitable means for settling their differences. *United Steelworkers v. Warrior and Gulf Co.*, 363 U.S. 574; *Sinclair Refining Co. v. NLRB*, 306 F.2d 569 (C.A. 5).

The maintenance of this strict congressional limitation on the Board's power does not threaten the enforcement of the Act. The agreement is in full effect and its provisions may be interpreted and applied according "to the usual processes of the law." In the instant case these will provide a completely adequate remedy.

ARGUMENT

In Remedying an Unfair Labor Practice the Board May Not Order Retroactive Payment of Fringe Benefits Arising Solely Under an Agreement When Failure to Pay Such Benefits is Not a Part of the Unfair Labor Practice Found.

This case represents an attempt by the Board to order specific performance of certain of the terms of a collective bargaining agreement, thus bypassing contractually binding grievance and arbitration procedures. The Board claims such right under the guise of its remedial powers to correct an unfair labor practice although the only unfair labor practice found was not at all the failure to perform the terms which the Board has ordered performed. In this attempt we submit it is in violation of congressional limits upon its jurisdiction and of decisions of this Court.

At the outset we point out that under the facts as found by the Board, Respondent was clearly bound as a party to all of the contractual provisions of the 1963-1967 collective bargaining agreement at all times from and after the execution of that agreement by his Trade Association on his behalf on August 15, 1963. As a regular member of the Roofing Contractors' Association of Southern California, Inc., Respondent had delegated to it the full authority, clearly set forth in its bylaws, to negotiate and reach a collective bargaining agreement for him which "shall be binding upon the regular members of this Association separate and collectively." (R. 35, 10, 11, 16). The agreement was completely negotiated, signed and effective as of August 15, 1963. (R. 9, 40 *et seq.*). Under elementary principles of agency and labor law, Respondent and the Union were both bound to all of its terms as of that date, including the elaborate grievance procedure culminating in binding arbitration. (R. 55-60).[3]

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[3] Article VII of the Master Labor Agreement between the Roofing Contractors' Association and the local unions sets out a complete grievance-arbitration procedure. It provides for the establishment of a Joint Labor Relations Board, comprised of an equal number of representatives from the union and management sides, which shall in the first instance hear all disputes over contractual terms, and "shall have the power to impose liquidated damages . . . for non-payment of wages and fringes . . . ." The decisions of this Board may be appealed to arbitration "which shall be final and binding upon all the parties to this Agreement." Section M of the Article states — "All grievances, other than jurisdictional disputes, arising out of the interpretation or application of any of the terms or conditions of this Agreement shall be submitted for determination and shall be determined by the procedure set forth in this Article; . . . ." (R. 55, 57, 58, 59).

In its brief the Board itself asserts that Respondent was "bound by any collective bargaining agreement between the Association and the Union" on August 15, 1963 (Br. p. 2) as it well must. Its afterthought *dubitante* expressions (Br. p. 17) are without merit in the light of established legal principles and seem only to indicate the Board's suspicion of the integrity of the courts.

The only unfair labor practice charged and found was a failure "on and after April of 1964" to sign and honor[4] the agreement, which the Board remedied by ordering Respondent to do so. (R. 108, 118, 120; Br. pp. 4-5). The failure to pay fringe benefits was not found to be an unfair labor practice, nor could it have been under these circumstances. It was nothing more nor less than a breach of Respondent's contractual obligations under the collective bargaining agreement remediable through the grievance and arbitration procedures.

Respondent's failure to sign the agreement, unfair labor practice though it may have been, neither added to nor detracted from the right of the Union to receive fringe benefits nor the obligations of Respondent to pay them as

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[4] The word "honor" as used in the Board's decisions and orders has long since been given judicial interpretation; it does not mean "perform."

> "Read in this light, the word 'honor' has the limited role of placing the parties, with reference to the contract, back in the position which they occupied prior to the breach. It does not mean that specific performance was decreed as Hyde contends. Nor is it an adjudication as to the validity of any or all of the contract provisions." *NLRB v. Hyde*, 339 F.2d 568 (C.A. 9) at 572-73.

provided in the agreement already binding upon him before that failure occurred. It was not this unfair labor practice that caused money damage to the Union. It was the refusal of Respondent, for economic reasons and through misinterpretation, to comply with the agreement. The rights and remedies of the Union and the employees to enforce the existing agreement with respect to fringe benefits were exactly the same between August 15, 1963, and April of 1964 as they were thereafter, i.e., to follow the grievance and arbitration procedures set out therein.

Under these circumstances the order of the Board requiring fringe benefits to be paid is clearly an attempt to "remedy injuries arising out of a breach of contract, a task which Congress has not assigned to it." See *Vaca v. Sipes*, 386 U.S. 171, 187. To permit it to do so would not only contravene the Congressional mandate but it would violate sound principles of labor-management relations and the sanctity of the grievance and arbitration procedures, as we shall now show.

The legislative history behind § 301 of the Act clearly indicates Congress' preference for forums other than the Board for the adjudication of contractual disputes. As recounted in *Charles Dowd Box Co. v. Courtney, supra*, the early versions of the bill passed by the Senate in 1947 contained a provision which called for the inclusion of breach of contract among the unfair labor practices subject to the jurisdiction of the Labor Board. S. 1126, 80th Cong., 1st Sess., §§ 8(a)(6) and 8(b)(5). In conference, however, these provisions were dropped and it was decided to make collective bargaining agreements enforceable only in arbitration and the courts because

"once parties have made a collective bargaining contract the enforcement of that contract should be left to the usual processes of law and not the National Labor Relations Board." H.R.Conf. Rep. No. 510, 80th Cong., 1st Sess. p. 42. This deliberate choice by Congress to exclude the Board from jurisdiction over collective bargaining agreements arose from a recognition of the different characteristics of judicial and administrative decision making. In his article on "Section 301 and the Primary Jurisdiction of the NLRB," 76 Harv.L.Rev. 529, Professor Sovern underlined the importance of this distinction:

> "Since contract rights going beyond the NLRA are involved in a substantial proportion, perhaps the overwhelming majority, of contract actions seeking relief against conduct that also arguably constitutes an unfair labor practice, the best course is to permit courts and arbitrators to decide all such cases. What the Supreme Court said in *Garmon* is also applicable here: 'The nature of the judicial process precludes an *ad hoc* inquiry into the special problems of labor-management relations involved in a particular set of occurrences in order to ascertain the precise nature and degree of federal-state conflict there involved, and more particularly what exact mischief such a conflict would cause. . . . Our task is confined to dealing with classes of situations.' In *Garmon*, this approach led to preemption; in the contract context, for the reasons already suggested, it leads in the opposite direction." (76 Harv.L.Rev. at 557-58).

The Board has no special expertise in the interpretation of contractual terms. Indeed, limited as it is to the effectuation of the Act, the Board is not nearly so flexible as are arbitrators in formulating the type of particular remedies which Congress thought necessary for the disposition of disputes over the terms of labor agreements. See, generally, Dunau, *Contractual Prohibition of Unfair Labor Practices: Jurisdictional Problems*, 57 Colum.L.Rev. 52.

The congressional policy of submitting contractual disputes to arbitration and not to the Board, has often been given great weight by the federal courts. In *NLRB v. American National Insurance Co.*, 343 U.S. 395, the Board had found a violation of § 8(a)(5) of the Act in the employer's continued insistence on the inclusion of a broad management functions clause. The Board's order contained a directive to the employer to refrain from further insistence on this point. The court of appeals refused to enforce, concluding that the employer was not precluded from further bargaining for such a clause. This Court affirmed, stating it to be clear "that the Board may not, either directly or indirectly, compel concessions or otherwise sit in judgment upon the substantive terms of collective bargaining agreements." 343 U.S. at 404.

The decisions of the courts of appeals have further emphasized this limitation on the power of the Board. In *United Steelworkers v. American International Aluminum Corp.*, 334 F.2d 147 (C.A. 5), the Union sought to compel arbitration of certain discharges and at the same time filed proceedings before the Board claiming the discharges constituted an unfair labor prac-

tice. The employer refused to go ahead with arbitration during the pendency of the Board proceedings. The district court dismissed the Union's action to compel arbitration, but the court of appeals reversed, pointing out that the two proceedings were separate and distinct, and there could be no overlap between them. Arbitration could not dispose of the claim under the statute, and the Board could not treat the claim under the agreement. "Indeed, so severely is the Board limited to the adjudication of statutory rights that it has no power to adjudicate contractual disputes." 334 F.2d at 152.[5]

The principle enunciated by the Court of Appeals in the instant case is thus squarely in line with the great weight of authority. The encroachment which the Board now seeks to make is out of harmony with the decisions of this Court and would tend to destroy the integrity of the policy favoring the settlement of disputes over labor agreements through "the usual processes of the law."

The decisions of this Court have recognized only two situations in which the Board may pass upon contractual issues. In *National Labor Relations Board v. C & C Plywood Corp.*, 385 U.S. 421, the Court upheld the Board's power to examine a contract for the limited purpose of determining whether it provided the employer a defense against an unfair labor practice charge. The employer had instituted a premium pay plan without

[5] Citing *Sinclair Refining Co. v. NLRB*, 306 F.2d 569, 576-78 (C.A. 5), in which the Fifth Circuit refused to enforce a Board order as against the contention that it determined issues beyond mere arbitrability. The pages cited contain a discussion of limitations on the Board's power imposed by the preference accorded to contractual remedies, particularly to arbitration.

prior consultation with the Union, relying on a provision in the agreement which arguably permitted him to do so. In the resultant § 8(a)(5) unfair labor practice proceedings, the Board rejected the defense that the Union had ceded to the employer the power to change the wage system unilaterally. This Court reversed the court of appeals' refusal to enforce the Board order. It found that the Board's entry into the area of contract adjudication "went only so far as was necessary to determine that the union did not agree to give up these statutory safeguards." 385 U.S. at 428. But the Court clearly distinguished this threshold determination from any attempt by the Board "to determine the extent of the contractual rights which were given the union by the employer." *Ibid.* In *C & C Plywood*, the Board had "done no more than merely enforce a statutory right which Congress considered necessary to allow labor and management *to get on with the process of reaching*[6] fair terms and conditions of employment. . . ." *Ibid.*[7]

It was precisely this boundary which the Court of Appeals observed in the instant case. The Board's finding that Strong had violated § 8(a)(5) by his refusal to sign the agreement, and its order that he execute it, serve to enforce the Union's statutory right to recognition herein. Such order completely confirms the *status quo*

[6] Emphasis supplied throughout.

[7] A factor which weighed heavily in the Court's decision to uphold the Board's order was the absence in the contract under discussion of any provision for arbitration. Thus, the Court did not feel the Board's order conflicted with the congressional policy favoring arbitration. The contract in the instant case, however, does provide for arbitration (Article VII, R. 55-60), see note 3, *supra*.

ante which the Board contends (Br. p. 11-12) is its duty to establish. But the further order calling for the retroactive payment of fringe benefits is an unwarranted exercise of plenary jurisdiction over the terms of the agreement already existing prior to the commission of the unfair labor practice.

The second exception recognized by this Court to the general policy against permitting the Board to dispose of contractual issues is restricted to cases where there is a precise coincidence of a breach of contract and an unfair labor practice. Thus, in *Smith v. Evening News Association*, 371 U.S. 195, 197, the Court concluded that it is the "authority of the Board to deal with *an unfair labor practice which also violates a collective bargaining contract*," which "is not displaced by Section 301."

The authority was similarly limited in *Local 174, Teamsters v. Lucas Flour Co.*, 369 U.S. 95, 101, n. 9:

> "It is, of course, true that *conduct which is a violation of the contractual obligation may also be conduct constituting an unfair labor practice*, and what has been said is not to imply that enforcement by a court of a contract obligation affects the jurisdiction of the N.L.R.B. to remedy unfair labor practices, as such."[8]

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[8] In *National Labor Relations Board v. Great Dane Trailers*, 388 U.S. 26, the Court commented (p. 31, note 7) "But when the elements of an unfair labor practice are present in a breach of contract, the injured party is not automatically deprived by Section 301 of his right to proceed before the Board. . . ." See also *Carey v. Westinghouse*, 375 U.S. 261, 268.

Even in this situation, however, the Court is careful to emphasize that the Board retains jurisdiction only to remedy the unfair labor practice, but not to deal with any peripheral contractual issues.[9] See *Local 174, Teamsters v. Lucas Flour Company*, 369 U.S. 95, 101, n. 9 and cases cited therein.

The Board has itself recognized the limitation on its discretion to remedy unfair labor practices. In *In Re Hyde*, 145 NLRB 1252, the Board refused to adopt the Trial Examiner's ruling that the employer, who had wrongfully repudiated an agreement, " 'comply with the provisions of the collective-bargaining agreement,' on the ground that the enforcement of the terms of a collective-bargaining agreement is for the courts rather than the Board." 145 NLRB at 1253. And in *In Re United Telephone Company of the West*, 112 NLRB 779, the Board abstained from adjudicating a dispute concerning

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[9] The order of the Board in the instant case ranges far beyond the narrowly circumscribed jurisdiction established by this Court. In remedying an unfair labor practice which is not in itself a breach of contract, the Board reaches out to enforce a contractual term, the violation of which alone could not under any circumstances support an unfair labor practice charge. The impropriety of its order can be readily demonstrated by the fact that Strong's failure to pay fringe benefits, absent any other violation of the statute, could only be remedied in an arbitration. This absence of jurisdiction in the Board results from a deliberate Congressional policy aimed at settling collective bargaining contract disputes through arbitration. But the Board's order would circumvent this stated policy merely because the breach of contract was accompanied by an unfair labor practice, rather than standing alone. It is hard to see how this juxtaposition serves to bring under the coverage of the Board an action which would clearly not otherwise be included.

overtime schedules, stating that "[t]he Board is not the proper forum for parties seeking to remedy an alleged breach of contract or to obtain specific enforcement of its terms." 112 NLRB at 782.

It is the clear mandate of the Act and the federal labor policy that the appropriate method for the settlement of contractual disputes is to be that selected by the parties,[10] which in the instant case, as in the vast majority of cases, is the grievance-arbitration procedure. That the courts are bound to defer to arbitration whenever it has been provided in the agreement is a proposition long considered crucial to the function of the industrial self government which lies at the core of labor relations law.

In *John Wiley & Sons v. Livingston*, 376 U.S. 543, at 549-50, this Court said:

> "This Court has in the past recognized the central role of arbitration in effectuating national labor policy. Thus, in *Warrior & Gulf Navigation Co.*,

[10] Section 203(d) of the Act, 29 U.S.C. § 173(d), expresses the policy:

> "(d) Final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement."

This preference for dispute-settlement arbitration does not, as the Board erroneously suggests at p. 13 of its brief, conflict with §10(a) of the National Labor Relations Act, 29 U.S.C. §160(a). That provision merely protects the Board's power to "prevent any person from engaging in any unfair labor practice." The breadth of that power is not here denied. Rather, it is contended that the Board's award goes beyond the necessities of the prevention of unfair labor practices. Arbitration would thus not replace or limit the Board's remedial power, but would begin where that power rightly ends.

supra, at 578, arbitration was described as 'the substitute for industrial strife,' and as 'part and parcel of the collective bargaining process itself.' . . . The preference of national labor policy for arbitration as a substitute for tests of strength between contending forces could be overcome only if other considerations compellingly so demanded."

It is submitted that this policy, as enunciated in the Steelworkers trilogy[11] with regard to the court, applies with equal force to the Board.

The collective bargaining agreement is more than just a contract; it is a code intended to govern all aspects of the relationships between labor and management. *John Wiley & Sons v. Livingston, supra.* At the heart of this system of self government lies the grievance machinery. In administering the system created by the agreement, an arbitrator is called upon to perform functions which are peculiar to grievance procedures.

> "The labor arbitrator's source of law is not confined to the express provisions of the contract, as the industrial common law — the practices of the industry and the shop — is equally a part of the collective bargaining agreement although not expressed in it." (*United Steelworkers v. Warrior and Gulf Co.*, 363 U.S. 574, 581-82).

It might be contended that these considerations, which dictate the preference for arbitration over judicial de-

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[11] *United Steelworkers v. American Manufacturing Co.*, 363 U.S. 564; *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574; *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593.

cision, may not weigh so heavily as applied to the Board. But this is contrary to the express intention of Congress in rejecting the general expertise of the Board in contract actions and relying rather on the particular expertise of the arbitrator. *Sinclair Refining Co. v. NLRB*, 306 F.2d 569, 576-78 (C.A. 5).

In the instant case, submission of the issue to arbitration will, of course, create a bifurcated action, but such bifurcation is clearly demanded by the prior decisions of this Court. The procedure is the same as that prescribed for a court in dealing with potentially arbitrable disputes:

> "The function of the court is very limited when the parties have agreed to submit all questions of contract interpretation to the arbitrator. It is confined to ascertaining whether the party seeking arbitration is making a claim which on its face is governed by the contract. Whether the moving party is right or wrong is a question of contract interpretation for the arbitrator. . . .
>
> "The courts, therefore, have no business weighing the merits of the grievance, considering whether there is equity in a particular claim, or determining whether there is particular language in the written instrument which will support the claim. The agreement is to submit all grievances to arbitration, not merely those which the court will deem meritorious. The processing of even frivolous claims may have therapeutic values of which those were not a part of the plant environment may be quite unaware. . . .

> "When the judiciary undertakes to determine the merits of a grievance under the guise of interpreting the grievance procedure of collective bargaining agreements, it usurps a function which under that regime is entrusted to the arbitration tribunal." (*United Steelworkers v. American Manufacturing Co.*, 363 U.S. 564, 567-68).

The situation in the instant case is precisely analogous. In agreeing that the Respondent was bound to the agreement, the Board necessarily concluded that the arbitration clause was in effect between the parties. For the further disposition of disputes clearly subject to that clause, such as the provision for the payment of fringe benefits, the Board must defer to arbitration. As Mr. Justice Harlan said in his concurring opinion in *Carey v. Westinghouse Corp.*, 375 U.S. 261, 273, in which the Court ordered the employer to go through with arbitration of a question which was arguably subject to the Board's jurisdiction, "the choice in substance lies between a course which would altogether preclude any attempt at resolving disputes of this kind by arbitration, and one which at worst will expose those concerned to the hazards of duplicative proceedings. . . . As between the two, I think the Court at this early stage of experience rightly chooses the latter."[12]

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[12] The decisions of this Court in *NLRB v. C & C Plywood, supra,* and *NLRB v. Acme Industrial Co.*, 385 U.S. 432, do not touch upon the situation presented by the instant case. As pointed out above, *C & C Plywood* dealt with a dispute over a contract which contained no arbitration clause. Thus, no policy favoring arbitration was offended by permitting the Board to determine the waiver question. On the other hand, *Acme,* in which

With all due respect, we submit that the Board is here attempting to evade the choice made by this Court and the congressional mandate that "once parties have made a collective bargaining contract, the enforcement of that contract should be left to the usual processes of the law." The Board, like the camel, is trying to get its nose under the tent. We believe that such attempt should be frustrated by this Court in the interest of the essential division of jurisdiction between the Board and the process of arbitration.

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the Court upheld the Board's finding of a § 8(a)(5) violation in the employer's refusal to supply data relevant to an arbitrable contract provision, presented a situation in which there was an arbitration clause. But the Court was careful to point out that its decision did not determine the merits of the dispute. 385 U.S. at 438, n. 7. Thus, the policy favoring arbitration was not offended there as well. In the instant case, however, there can be no question that the Board's award disposes completely of an arbitrable contractual dispute. In the only other case in which such a situation has heretofore been presented, the Fifth Circuit refused to enforce a Board order compelling the production of certain data relevant to an arbitrable controversy because the order necessarily implied a conclusion that the Union's interpretation of the agreement was correct and that of the employer was incorrect. *Sinclair Refining Co. v. NLRB*, 306 F.2d 569 (C.A. 5).

CONCLUSION

For the foregoing reasons the judgment of the Court of Appeals refusing to enforce the order of retroactive payment of fringe benefits should be affirmed.

Respectfully submitted,

WILLIAM B. CARMAN

CHARLES G. BAKALY, JR.

Counsel for Joseph T. Strong

Of Counsel

O'MELVENY & MYERS

August, 1968

SUPREME COURT OF THE UNITED STATES

No. 61.—OCTOBER TERM, 1968.

National Labor Relations Board, Petitioner, v. Joseph T. Strong, d/b/a Strong Roofing & Insulating Co. | On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[January 15, 1969.]

MR. JUSTICE WHITE delivered the opinion of the Court.

The Roofing Contractors Association of Southern California, of which respondent was then a member, negotiated a collective bargaining contract with the Roofers Union,[1] effective August 15, 1963, establishing compensation levels for the employees of member firms for the next four years. On August 20, 1963, respondent sought to withdraw from the multiple employer bargaining association which had negotiated this agreement. He then refused repeated demands from the union that he sign the contract. At length, the union filed unfair labor practice charges with the National Labor Relations Board, which found that respondent's refusal to sign the contract which had been negotiated on his behalf by the Association was a violation of §§ 8 (a)(5) and (1) of the National Labor Relations Act, 29 U. S. C. §§ 158 (a)(5) and (1). The Board ordered respondent to sign the contract, cease and desist from unfair labor practices, post notices, and "[p]ay to the appropriate source any fringe benefits provided for in the above described contract." 152 N. L. R. B. 9, 14 (1965). The Court of Appeals enforced the Board's order except as it required the payment of fringe benefits. That part of the order, the Court of Appeals

[1] Roofers Local 36, United States Tile and Composition Roofers, Damp and Waterproof Workers Association.

said, "is an order to respondent to carry out provisions of the contract and is beyond the power of the Board." 386 F. 2d 929, 933 (1967). The Government sought and we granted certiorari as to this holding. 391 U. S. 933 (1968). Believing the remedy provided by the Board was well within its powers, we reverse the judgment of the Court of Appeals. Section 10 (c) of the Act empowers the Board when it adjudicates an unfair labor practice to issue "an order requiring such person to cease and desist from such unfair practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act." 61 Stat. 147, 29 U. S. C. § 160 (c). This grant of remedial power is a broad one. It does not authorize punitive measures, but "[m]aking the workers whole for losses suffered on account of an unfair labor practice is part of the vindication of the public policy which the Board enforces." *Phelps Dodge Corp.* v. *NLRB*, 313 U. S. 177, 197 (1941). Back pay is one of the simpler and more explicitly authorized remedies utilized to attain this end.[2]

Here the unfair labor practice was the failure of the employer to sign and acknowledge the existence of a collective bargaining agreement which had been negotiated and concluded on his behalf. There is no dispute that respondent withdrew from the Roofing Contractors Association too late to escape the binding force of the agreement it had negotiated for him, supplanting previous agreements which had been negotiated in the same way.[3] Nor, in light of the obligation of an employer bar-

[2] See generally *Nathanson* v. *NLRB*, 344 U. S. 25, 29–30 (1952); Note, A Survey of Labor Remedies, 54 Va. L. Rev. 38, 41–95 (1968).

[3] Respondent is a past president of the Association, and thus was familiar with its bylaw that a "labor contract negotiated by the Committee shall be binding upon the Regular Members of this Association separately and collectively . . ."

gaining in good faith to sign a contract reducing agreed terms to writing, *H. J. Heinz Co. v. NLRB*, 311 U. S. 514, 524–526 (1941), is it argued that respondent's failure to sign the agreement was not an unfair labor practice. The judgment of the Board in these respects is not now challenged. The remedy ordered by the Board included a direction to pay the fringe benefits which would have been paid had the employer signed the agreement and thereby recognized his legal obligations which had matured during the collective bargaining process. This is no more than the Act and cases like *Phelps-Dodge* plainly authorize.

The challenge of the employer, in brief, is that ordering the payment of fringe benefits reserved in the contract inserts the Board into the enforcement of the collective bargaining agreement, contrary to the policy and scheme of the statute.[4] Admittedly, the Board has no plenary authority to administer and enforce collective bargaining contracts. Those agreements are normally enforced as agreed upon by the parties, usually through grievance and arbitration procedures, and ultimately by the courts. But the business of the Board, among other things, is to adjudicate and remedy unfair labor practices. Its authority to do so is not "affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise . . . ." § 10 (a), 61 Stat. 146, 29 U. S. C.

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[4] The fact that the payments in question here did not constitute direct pay to the employees is irrelevant in our view of this case. Whether the payments were made to the employees, who then contributed them to union trust funds in the form of higher union dues, or whether as here they passed straight from the employer to the trust funds, the final result is the same. And it is just as much in the interest of "effectuat[ing] the policies of this Act," and of making the employees whole, to require the payments in either case.

§ 160 (a). Hence, it has been made clear that in some circumstances the authority of the Board and the law of the contract are overlapping, concurrent regimes, neither pre-empting the other. *NLRB* v. *C & C Plywood Corp.*, 385 U. S. 421 (1967); *Carey* v. *Westinghouse Electric Corp.*, 375 U. S. 261, 268 (1964); *Smith* v. *Evening News Assn.*, 371 U. S. 195, 197–198 (1962); *Teamsters Local 174* v. *Lucas Flour Co.*, 369 U. S. 95, 101, n. 9 (1961). Arbitrators and courts are still the principal sources of contract interpretation,[5] but the Board may proscribe conduct which is an unfair labor practice even though it is also a breach of contract remediable as such by arbitration and in the courts. *Smith* v. *Evening News Assn.*, 371 U. S. 195, 197–198 (1962). It may also, if necessary to adjudicate an unfair labor practice, interpret and give effect to the terms of a collective bargaining contract. *NLRB* v. *C & C Plywood Corp.*, 385 U. S. 421 (1967).

Bearing more precisely on this case, the Board is expressly invited by the Act to determine whether an employer has refused to bargain in good faith and thereby violated § 8 (a)(5) by resisting "the execution of a written contract incorporating any agreement reached if requested by either party . . . ." § 8 (d), 61 Stat. 142, 29 U. S. C. § 158 (d); *H. J. Heinz Co.* v. *NLRB*, 311 U. S. 524–526 (1941). The Board is not trespassing on forbid-

[5] Steelworkers Trilogy, 363 U. S. 564, 574, 593 (1960). Congress established the judicial remedy of § 301 of the Labor Management Relations Act, 61 Stat. 156, 29 U. S. C. § 185, in lieu of a proposal to make breach of a collective bargaining agreement itself an unfair labor practice. H. R. Conf. Rep. No. 510, 80th Cong., 1st Sess., 41–42. The House Conference Report asserts that "[o]nce parties have made a collective bargaining contract the enforcement of that contract should be left to the usual processes of the law and not to the National Labor Relations Board," *id.*, at 42. See *Textile Workers* v. *Lincoln Mills*, 353 U. S. 448, 452 (1957). Cf. LMRA § 201, 61 Stat. 152, 29 U. S. C. § 171.

den territory when it inquires whether negotiations have produced a bargain which the employer has refused to sign and honor, particularly when the employer has refused to recognize the very existence of the contract providing for the arbitration on which he now insists. To this extent the collective contract is the Board's affair, and an effective remedy for refusal to sign is its proper business.

Firing an employee for union membership may be a breach of contract open to arbitration, but whether it is or not, it is also an unfair labor practice which may be remedied by reinstatement with back pay under § 10 (c) even though the Board's order mandates the very compensation reserved by the contract. Cf. *NLRB* v. *Great Dane Trailers, Inc.*, 388 U. S. 26 (1967); *Mastro Plastics Corp.* v. *NLRB*, 350 U. S. 270 (1956); *Wallace Corp.* v. *NLRB*, 323 U. S. 248 (1944).

The case before us is little, if any, different. The act of refusing to sign the collective bargaining agreement may not have been a breach of contract, but it was an unfair practice. Once adjudicated, it could be remedied by a Board order requiring payment of those fringe benefits which would have been paid had the employer signed and acknowledged the contract which had been duly negotiated on his behalf. The judgment of the Court of Appeals is reversed.

It is so ordered.

MR. JUSTICE BLACK concurs in the reversal of the Court of Appeals' judgment, but he would direct that the case be remanded to the Board for it to determine whether to submit to arbitration in accord with the contract.

SUPREME COURT OF THE UNITED STATES

No. 61.—October Term, 1968.

National Labor Relations Board, Petitioner, v. Joseph T. Strong, d/b/a Strong Roofing & Insulating Co. | On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[January 15, 1969.]

MR. JUSTICE DOUGLAS, dissenting.

There is a surface logic in what the Court does today: if the Board may award back pay (which is computed from the collective bargaining agreement), it should be allowed to award fringe benefits, whose character and amount are also determined by the collective agreement. An award of back pay, however, is an express part of the legislative grant of authority,[1] while the award of fringe benefits is not. That is, of course, not a complete answer, for Congress did not make an exhaustive catalogue of devices used to thwart the Act, but largely left to the Board "the relation of remedy to policy." See *Phelps Dodge Corp.* v. *Labor Board*, 313 U. S. 177, 194.

What distinguishes the present case is the fact that fringe benefits are not products of a computer but of an arbitral process to which Congress has given strong support.[2] See *Textile Workers* v. *Lincoln Mills*, 353 U. S. 448.

[1] Sec. 10 (c) of the Act authorizes the Board, when it finds an unfair labor practice, "to issue an order requiring such person to cease and desist from such unfair labor practice and to take such affirmative action including reinstatement of employees with or without back pay as will effectuate the policies of the Act."

[2] See, *e. g.*, Aaron, On First Looking into the Lincoln Mills Decision in McKelvey, Arbitration and the Law (1959); Bickel & Wellington, Legislative Purpose and the Judicial Process: The Lincoln

The provision for arbitration is in a sense competitive with the provision empowering the Board to remedy an unfair labor practice. It is indeed an integral part of the collective agreement providing a procedure *sui generis* for resolving grievances that arise.

There were proposals, as we noted in *Dowd Box Co. v. Courtney*, 368 U. S. 502, 510–511, to make a breach of a collective bargaining agreement an unfair labor practice subject to the jurisdiction of the National Labor Relations Board. But those proposals never gained the necessary support, Congress deciding that "Once parties have made a collective bargaining contract . . . the enforcement of that contract should be left to the usual processes of the law and not to the National Labor Relations Board." H. R. Conf. Rep. No. 510, 80th Cong., 1st Sess., p. 42, quoted in *Dowd Box Co. v. Courtney*, *supra*, at 511. It is that policy that is reflected in § 301 of the Labor Management Relations Act of 1947 which was before us in *Lincoln Mills*, 353 U. S., at 452. That policy was to exchange an agreement to arbitrate grievance disputes for a no-strike agreement. *Id.*, at 455.

Arbitration is not a process which the Board is either equipped or qualified to follow. Those who are arbiters have special qualifications in a particular industry and come to know the common law of the shop.[3]

Mills Case, 71 Harv. L. Rev. 1 (1957); Bunn, Lincoln Mills and the Jurisdiction to Enforce Collective Bargaining Agreements, 43 Va. L. Rev. 1217 (1957); Cox, Reflections on Labor Arbitration, 72 Harv. L. Rev. 1482 (1959); Cox, The Legal Nature of the Collective Bargaining Agreement, 57 Mich. L. Rev. 1 (1958); Feinsinger, Enforcement of Labor Agreements, 43 Va. L. Rev. 1261 (1957); Gregory, The Law of the Collective Agreement, 57 Mich. L. Rev. 635 (1959); Jenkins, The Impact of Lincoln Mills on the National Labor Relations Board, 6 U. C. L. A. L. Rev. 355 (1959).

[3] See, *e. g.*, Christensen, Arbitration, Section 301, and the National Labor Relations Act, 37 N. Y. U. L. Rev. 411 (1962); Kovarsky, Labor Arbitration and Federal Pre-emption, 47 Minn. L. Rev. 531

The jurisdiction of any agency or branch of government has a built-in impetus for growth and expansion. Seldom does a department restrict its powers narrowly and assume a self-denying attitude. The tendency is to construe express powers broadly. The organism grows by subtle and little-noticed extensions of authority. To students of government this phenomenon is as predictable as the operation of other so-called "laws."[4]

Courts are no exception; and part of their tendency to find easy extensions of their authority was seen in their early contest with administrative agencies. See *United States* v. *Morgan*, 307 U. S. 183, 191. Recent examples exist in this very field of arbitration with which we are concerned here. We noted in *Steelworkers* v. *Warrior & Gulf Co.*, 363 U. S. 574, how some courts were being enticed to construe arbitration clauses as permitting or not permitting arbitration of certain kinds of disputes and then becoming entangled in the arbitral process, though it was for the arbiters not for them. *Id.*, at 585. We relegated the courts to their narrow field, leaving arbitration to the new *expertise*.[5]

(1963); Smith & Jones, Impact of Emerging Federal Law of Grievance Arbitration on Judges, Arbitrators, and Parties, 52 Va. L. Rev. 831 (1966); Smith & Jones, The Supreme Court and Labor Dispute Arbitration: The Emerging Federal Law, 63 Mich. L. Rev. 751 (1965); Comment, Common Law of Grievance Arbitration, 58 Nw. U. L. Rev. 464, 494 (1964).

[4] C. H. Parkinson, Parkinson's Law (1957).

[5] See Aaron, Arbitration in the Federal Courts—The Aftermath of the Trilogy, 9 U. C. L. A. L. Rev. 360 (1962); Davey, The Supreme Court and Arbitration: The Musings of an Arbitrator, 36 Notre Dame Law. 138 (1960); Fleming, Some Observations on Contract Grievance Before Courts and Arbitrators, 15 Stan. L. Rev. 595 (1963); Gregory, Enforcement of Collective Agreements by Arbitration, 47 Va. L. Rev. 883 (1962); Jones, "Arbitrability" and "Authority" in Labor Arbitration, 46 Tex. L. Rev. 865 (1968); Mayer, Labor Relations, 1961: The Steelworkers Cases Re-examined, 13 Labor L. J. 213 (1962); Meltzer, Supreme Court, Arbitrability,

An arbiter is not of course free "to dispense his own brand of industrial justice" but is admonished "to reach a fair solution of a problem" within the letter and spirit of the collective agreement. *Steelworkers* v. *Enterprise Corp.*, 363 U. S. 593, 597. The past practices of the parties, as well as the contractual provisions themselves, are the guidelines.[6] *Local 77* v. *Philadelphia Orchestra*, 252 F. Supp. 787. The agreement to arbitrate is, moreover, more than a contract; it is a generalized code that is understood only in light of the "common law of the shop which implements and furnishes the context of the agreement." *Steelworkers* v. *Warrior & Gulf Nav. Co.*, 363 U. S. 574, 580. It is sometimes called "a cooperative effort by the parties and the arbitrator to develop a workable solution to the problem."[7] There is a more jaundiced view. Judge Hays, who has had considerable experience in the field, has stated:

> "A proportion of arbitration awards . . . are decided not on the basis of the evidence or of the contract or other proper considerations, but in a way which in the arbitrator's opinion makes it likely that he will be hired for other arbitration cases." Hays, Labor Arbitration: A Dissenting View (1966), p. 112.[8]

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and Collective Bargaining, 28 U. Chi. L. Rev. 464 (1960); Smith & Jones, Management and Labor Appraisals and Criticisms of the Arbitration Process: A Report with Comments, 62 Mich. L. Rev. 1115 (1964).

[6] See Treece, Past Practice & Its Relationship to Specific Contract Language in the Arbitration of Labor Disputes. 40 Colo. L. Rev. 358, 360 *et seq.* (1968). Domke, Arbitration, 36 N. Y. U. L. Rev. 545 (1961); Fleming, Reflections on the Nature of Labor Arbitration, 61 Mich. L. Rev. 1245 (1963).

[7] Aaron, Judicial Intervention in Labor Arbitration, 20 Stan. L. Rev. 41, 55 (1967).

[8] But see Meltzer, Ruminations About Ideology, Law and Labor Arbitration, 34 U. Chi. L. Rev. 545 (1967).

Whatever view of the process may be taken, it is clear that determining fringe benefits under a collective agreement is no job for a computer. But it can be hardly more than that when the Labor Board makes its computations for insertion in the remedial order.

What the "common law" of the shop would show covering these fringe benefits, what "past practices" might reflect on the amount of an award, what "a fair solution" of the problem might seem to be in an arbitration frame of reference, no one knows. These are matters for arbiters, chosen by the parties under the collective agreement, not for the Board, an alien to the system envisioned by *Textile Mills*.